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In The

Supreme Court of the United States

OCTOBER TERM, 1980

VITO CARIELLO,
PETITIONER

-vs-

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

1. In finding that petitioner, a labor union's treasurer, had joined a conspiracy in which other union officials obtained personal loans from banks where petitioner routinely deposited employee benefit trust funds, did the court of appeals disregard this Court's teachings that "all of the evidence" must be searched for "clear, not equivocal" proof of guilty knowledge, and instead adopt a standard for factual review which grossly distorted an undisputed record and which yielded a finding of guilt by association?

2. In approving and inviting the taking of special verdicts in criminal cases before -- rather than after -- a general verdict has been returned did the Third Circuit (a) sanction a practice which is not authorized by the Rules of Criminal Procedure, and (b) create a conflict with the

other circuits, none of which approves the taking of special verdicts in criminal cases before a general verdict has been rendered?

3. In approving the special verdicts used this trial, did the court of appeals overlook specific prejudice to petitioner, namely, that the special verdict form addressed only a single element of the RICO offense -- loans, none of which benefited petitioner -- and thereby obscured the essential element that was critical for petitioner, to wit, whether petitioner selected depository banks with knowledge that another union official had been leading bankers into the erroneous belief that trust fund deposits were conditioned upon the granting of personal and business loans?

4. Was the court of appeals patently in error in its alternative holding that the special verdict issue had been waived, where (a) contrary to its

opinion, an unequivocal timely objection to taking special verdicts was made at trial, as the prosecution indeed had conceded, and (b) the court found a waiver in the failure to present an objection when moving for a new trial, notwithstanding this Court's settled teaching that timely objections at trial are automatically preserved for appellate review?

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IN THE SUPREME COURT OF THE UNITED STATES

VITO CARIELLO, Petitioner,

- versus -

UNITED STATES OF AMERICA, Respondent.*

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Vito Cariello hereby petitions that a writ of certiorari issue to the United States Court of Appeals for the Third Circuit to review its judgment at No. 79-2149.

OPINION BELOW

The opinion of the court of appeals was filed on September 3, 1980. It is published at 630 F.2d 192 and reproduced at 1a.

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* Other parties in the court below were Joseph Campisano (petitioner at No. 80-1271); Ernest P. Palmeri, Sr., and Frank Smith (petitioners at No. 80-1120); and Flen Chestnut (as to whom the court of appeals found the evidence insufficient).

JURISDICTION

Petitioner was convicted after trial by jury on indictment No. 78-297 in the United States District Court for the District of New Jersey. He received a four year custodial sentence which has been stayed pendente lite.

The judgment below (29a), affirming his conviction, was filed on September 3, 1980. An order (32a) denying his petition for rehearing was filed on November 6, 1980.

An order (34a) was entered by the Circuit Justice on December 8, 1980, extending the time within which to file the instant petition up to and including February 4, 1981.

This Court's certiorari jurisdiction is established by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Due Process clause of the Fifth Amendment to the Constitution, the Trial by Jury clause of the Sixth

Amendment to the Constitution, 18 U.S.C. §§ 1954, 1961, 1962, and Federal Rules of Criminal Procedure 31, 51. The pertinent provisions are reproduced at 35a.

INTRODUCTORY STATEMENT

Vito Cariello, at all times pertinent, was the treasurer of Teamsters Local 945's Severance Fund and Welfare Fund. In that capacity, he performed essentially ministerial duties in compliance with the trustees' investment policy of maintaining assets in bank certificates of deposit (CD's). Petitioner was obliged to seek and obtain competitive interest rates, and to avoid concentrating assets in any one bank. His discretionary powers were limited to selecting depository banks with the approval of a management trustee who co-signed the check with which each CD was purchased.*

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* Management trustee Pompeo Iommetti, who co-signed each of the 18 trust fund checks in evidence, was never named in the indictment or in the testimony.

Between June 1973 and October 1978 petitioner and the management co-trustee deposited trust funds at 18 different local banks. The prosecution charged that petitioner selected nine of those banks to further a scheme whereby Ernest Palmeri, Sr., a business agent of the local and a co-defendant of petitioner, would receive or arrange for personal or business loans. The RICO count of the indictment put in issue 44 such Palmeri loans and one kickback to a Palmeri nominee (hereinafter all referred to as "loans"), together with a separate and unrelated first mortgage obtained by business agent Chestnut on his home without Palmeri's involvement, on the theory that each of these third-party loans was a bribe to petitioner in violation of 18 U.S.C. § 1954.

Although the gist of the accusation was bribery, the government made absolutely no claim that petitioner benefited, directly or indirectly, from any of the Palmeri loans.

And although petitioner knew about the Chestnut mortgage, which was a wholly innocent and routine transaction that involved no loans-for-deposits understanding, the prosecution offered no evidence whatsoever -- direct, circumstantial, or even hearsay -- that petitioner knew about the 45 loans from depository banks to Palmeri and his nominees.

Neither did the prosecution claim that petitioner violated the trustees' investment standards, jeopardized the assets of the trust funds, or obtained rates of interest which were lower than might have been available. It was undisputed that petitioner safeguarded the trust funds zealously. The cestuis que trust lost nothing; petitioner gained nothing.

The prosecution freely acknowledged that petitioner had no stake in the charged criminal venture. The theory of criminality described in its opening statement portrayed petitioner as:

> "the key to the other defendants obtaining loans and kickbacks from the banks. For this fund money which you will learn was his responsibility to invest was used as leverage to obtain loans and kickbacks."

Early in the trial, the prosecution acknowledged that in order to sustain its theory it obviously had to prove that Mr. Cariello knew about the loans. And it candidly conceded that its case against petitioner

> "is going to be a circumstantial case; it's going to be a question of whether he knew * * * what the others were doing and played along with it."

Later, the prosecution entered into a stipulation (69a) that in his capacity as treasurer, petitioner regularly reported to a number of union personnel, including each of his co-defendants, on financial matters. This stipulation indisputably established that the charged loans-for-deposits scheme could operate without petitioner's knowing participation; at the local's headquarters, the banks holding deposits and the dates

when CD's would be up for renewal was common knowledge. Under the stipulated facts, it would be a simple matter for any of the co-defendants to tell bankers that deposits were conditioned upon approval of personal and business loans, and there was no way petitioner could know of this nor could he prevent it. The stipulation therefore supported a reasonable hypothesis of petitioner's innocence that nothing in the record would refute.

By the end of the trial, the government told the jury it recognized "that the issue with regard to Mr. Cariello is whether he knowingly allowed the funds to be used to obtain loans and kickbacks." Thereafter the prosecution pointed to no proof of petitioner's "knowledge;" it sought to have the jury infer "knowledge" from the labor union relationship of the various defendants, while making no serious claim that petitioner knew about the loans. The

prosecution's closing statement repeatedly condemned him for "allowing" trust funds to be misused, arguing to the jury that but for petitioner's knowing co-signing of certain checks with which CD's were purchased, his co-defendants could not have obtained loans from the issuing banks. How co-signing checks with which he made lawful deposits supports the required inferences that petitioner knew about the loans and sought to facilitate their approval has never been explained.

Petitioner's position is that he is innocent in fact, and that the proofs offered at his trial were insufficient as a matter of law. He contends that the jury's erroneous determination resulted from the use of a special verdict form. That form effected the judicial highlighting of one element of the charged offenses -- loans, a critical issue for his co-defendants -- and concomitantly led the jury to overlook the

different element -- knowledge -- upon which petitioner's substantial defense was bottomed.

Petitioner further contends that on appeal, the Third Circuit searched the record for any evidence whatsoever that could support the verdict. In doing so, that court removed testimony from its undisputed context, thereby imputing wholly unwarranted adverse meanings and inferences to proofs which were in fact guilt-negating.

In then holding that the prosecution's highly equivocal circumstantial evidence was adequate to establish petitioner's guilty knowledge and intent, the Third Circuit disregarded the review standards laid down by this Court; it substituted a standard of review for sufficiency which inevitably imputes guilty knowledge and intent to unwitting accomplices who have organizational relationships with each other or with knowing perpetrators.

The specific issues presented in this Petition therefore are not academic technicalities; they are fundamental. They go to the methods by which first a jury, and then a reviewing court, must determine guilt or innocence. Accordingly, their proper resolution is essential to the true administration of justice.

STATEMENT OF THE CASE

A: THE INDICTMENT

Petitioner, together with Local 945's president (Joseph Campisano) and three of its business agents (Flen Chestnut, Ernest P. Palmeri, Sr., and Frank Smith), was indicted in the United States District Court for the District of New Jersey. The 23-count indictment (40a) charged three groups of offenses, all related to loans made by nine of the 18 banks in which petitioner had deposited assets of the Severence and Welfare Funds.

Counts 1 and 2 invoked the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 et seq. All five defendants were charged in Count 1 with conspiring in violation of 18 U.S.C. § 1962(d) to conduct the affairs of the union local "through a pattern of racketeering activity involving multiple violations of [18 U.S.C. § 1954]" (¶ 2). All five

defendants were charged in Count 2 with violating 18 U.S.C. § 1962(c) (the substantive RICO offense) by receiving and agreeing to receive 45 loans and one "kickback" or finder's fee:

> "because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund and Severance Fund, to wit, the purchase of certificates of deposit at [specified] banks with the assets of the Welfare Fund and Severance Fund . . ." [¶ 2].

Counts 3 through 15 invoked 18 U.S.C. § 1954. That statute condemns bribery in the management of employee benefit trust funds such as Local 945's Welfare Fund and Severance Fund. Each of these counts charged that petitioner, business agent Palmeri, and in some cases one or more of the other defendants, obtained a specific loan as the quid pro quo for "the purchase of certificates of deposit at the [lending] bank with assets of" Local 945's Severance and/or Welfare Funds. Each of these 13 loans was

also charged as one of the 46 listed in Count 2.

The remaining counts invoked 18 U.S.C. § 1014. That statute condemns the making of false statements on loan applications submitted to federally-insured banks. Counts 16 through 23 charged various of petitioner's co-defendants with making false statements when applying for eight of the 46 loans listed on the schedule annexed to Count 2. The grand jury did not charge, and the prosecution never contended, that petitioner made any loan applications whatsoever. Petitioner was not involved in any way with counts 16 to 13.

B: INSUFFICIENCY OF THE EVIDENCE

From the outset, the prosecution conceded that the evidence as to petitioner was different from that against his co-defendants. Although petitioner had been cited by the grand jury as a participant in every one

of the 46 loans, petitioner was the only defendant who received no loans; he, alone, had no stake in the venture. Not only did petitioner enjoy no personal benefit from the charged bribery scheme; the trust funds, which the statutes involved seek to protect, suffered no loss and no unauthorized or unreasonable risk of loss.

The prosecution readily acknowledged that its case against petitioner was circumstantial. But for every circumstance which the prosecution cited as pointing to petitioner's participation in the scheme, its own witnesses told of incidents that were inconsistent with his guilt: Petitioner ignored a suggestion by the local president to make additional deposits at the Anthony Wayne Bank; petitioner renewed CD's at the Bank of Bloomfield on six occasions during 17 months after the forced resignation of its corrupt president, later indicted for 212 counts of bank fraud, even though

Palmeri could obtain no more loans from that bank; petitioner demanded and promptly obtained an upward adjustment in the interest rate on one CD, notwithstanding Palmeri's assurance to the banker that petitioner would honor the "deal" Palmeri had made to exchange a kickback for a reduced interest rate.

At bottom, when all the circumstances are considered, nothing emerges which is inconsistent with petitioner's assertion that he was an unwitting accomplice, that he picked depository banks on the basis of their interest rates and not on the basis of their loan policies. And it is of no small significance that none of the witnesses testified that petitioner was present, let alone participating, during discussions at which loans were tied to deposits.

Contrary to the foregoing assertion, the opinion below appears to place petitioner in the midst of some incriminating conversa-

tions. In each instance, however, the government's own witnesses verified that petitioner was absent every time that the topic of loans-for-deposits was being discussed. Two examples will demonstrate that the court of appeals interpreted the "light most favorable to the government" standard as a license to divorce evidence from its undisputed context.

Judge Aldisert wrote for the court below (6a):

> In April, 1974, Palmeri and two officials from other unions threatened to withdraw their union deposits from the State Bank of Chatham unless [banker] Smith adopted a one hundred percent loans-for-deposits ratio. At that point Cariello and Campisano entered the room and Cariello announced that the union could keep its money in any bank with a competitive interest rate. On the promise of still more deposits, and with the approval of the bank's board of directors, Smith ultimately agreed to a sixty percent ratio.

That quotation unequivocally implies that petitioner was a party to corrupt bargaining and was completely immersed in a

loans-for-deposits scheme. The record, however, directly disputes that implication.

The sole pertinent testimony came from banker Smith. He testified that the meeting at which a loan-to-deposit ratio was bargained took place at business agent Palmeri's office in Local 945's headquarters. But when petitioner and the local's president entered the room, the loan-to-deposit ratio discussion stopped. Petitioner was asked whether it mattered in which bank funds were deposited. He answered that his sole concern was to obtain a competitive interest rate. He then left the meeting. After petitioner's departure, the bargaining resumed and a 60% ratio was worked out.

By disregarding the undisputed fact that petitioner was not present during the "ratio" conversation, the court of appeals generated an unwarranted and wholly arbitrary inference of petitioner's guilty knowledge and intent. A similarly skewed read-

ing of an undisputed record yielded a false condemnation of petitioner with respect to the charged kickback.

The testimony indicated that a $1000 finder's fee was paid to a Palmeri nominee in exchange for the Welfare Fund's purchase of a $100,000 certificate of deposit from the State Bank of Springfield. The bank had attempted to recoup this finder's fee by reducing the rate of interest it paid on the certificate. Upon learning of the CD's interest rate petitioner demanded an upward adjustment. The banker then asked Palmeri to get petitioner off his back. Palmeri assured the banker, "You got a deal. Don't worry about it" (11a).

The court of appeals found in the "deal" conversation a convincing "refutation of Cariello's assertion that he relied solely on interest rates in placing the funds" (27a). But in reaching that conclusion, the Third Circuit disregarded crucial undisputed

testimony, all of which came from the government's own witnesses. Cariello had not participated in the negotiation of the kickback; Cariello never agreed to or acquiesced in a non-competitive interest rate; and Cariello was not present when Palmeri told the banker he had a "deal."

Most significantly, the court below made no mention of the undisputed fact that because of Cariello's insistence, the bank was forced to raise the interest rate to the level petitioner had demanded. There was obviously no "deal" so far as petitioner was concerned; neither was there any refutation of petitioner's contention that he was concerned with rates of return, and not with lending policies, when he made deposit decisions.

In the entire record, the only loan of which petitioner was shown to have any knowledge was the residential first mortgage obtained by business agent Chestnut from

Totowa Savings and Loan Association. Petitioner's involvement in that transaction was innocuous and the loan was wholly proper; he had called an officer at Totowa and asked whether it could provide mortgage financing for an employee of the local union. The banker indicated that it would depend upon the merits of the application. Petitioner then picked up a blank mortgage application, which Chestnut later completed and submitted to Totowa.

The Chestnut mortgage was routinely processed. The government's banker-witness testified that no special influence was involved at any stage; the application was approved on its merits. Chestnut received no special consideration in the decision to lend or in the rate of interest. There had been no intimation at any time that trust fund deposits would be conditioned upon the granting of a mortgage to Chestnut. Because there was no quid pro quo understanding,

this loan was an innocent transaction; it involved no violation of § 1954, and the government did not even charge it as an independent crime.

Beyond being wholly innocent on its face and on the available record, the Chestnut mortgage is easily distinguished from the other loans identified in the indictment. This was the only residential first mortgage among the 46 loans placed in issue. It was the only fully secured loan. It was the only loan in question that had been granted by a thrift institution; all 45 of the other loans came from commercial banks. Thus, the Chestnut mortgage was qualitatively unique; it did not conform to the modus operandi of the overall scheme.

Most importantly, Chestnut's mortgage was the only loan in which Palmeri -- the "hub" of the conspiracy (24a) -- was not involved. The Chestnut mortgage, therefore, had been an isolated transaction. It in no

way implicated Cariello in any wrong, let alone in the charged conspiracy and the other 45 loans.

The Third Circuit nonetheless held this one loan to be the essential and otherwise missing "link" (26a) between petitioner and the overall scheme, even as it exonerated Chestnut of all charges. If, as is demonstrable, the Third Circuit has adopted wholly indefensible standards for attributing guilty knowledge and intent to petitioner on the basis of this "link," then the entire case against Cariello falls.

C: THE SPECIAL VERDICTS

The jury was directed to return special verdicts with its general verdicts. The special verdict form and accompanying instruction (70a) asked whether particular defendants were "guilty" or "not guilty" on each of the "racketeering acts," i.e., the 46 loans, that were listed in Count 2 (46a).

Petitioner was the only defendant who did not negotiate or receive any of those loans. Nevertheless, because he had signed each of the deposit checks for the trust funds, he, and he alone, was accused of complicity in all 46 of the questioned transactions.

Petitioner's attorney vigorously argued against providing the Count 2 loan schedule to the jury, fearing that the sheer number of loan accusations would distract the jury from separately evaluating his client's knowledge and intent. The trial judge recognized the danger of this happening, but decided that this danger to petitioner would be offset by a compensating advantage to some other defendants, who were only cited for a handful of the loans. In deciding not to withhold any part of the indictment from the jury, the district judge acknowledged he was balancing petitioner's rights against those of some co-defendants with the comment

that "it kind of cuts both ways."

The indictment therefore went into the jury room, complete with the loan schedule. The jury's special verdict form could not be filled out without repeatedly referring to that loan schedule, because the verdict form only identified the 46 loans by number, whereas the schedule identified the bank, the borrower, the date, and the amount of each loan.

On appeal, petitioner contended that special verdicts are not authorized in criminal cases and should be eschewed. The Third Circuit rejected this contention. In a radical departure from traditional jurisprudence, it commended resort to special verdicts in all complex criminal cases (21a):

> "We think special interrogatories were properly employed to decrease the likelihood of juror confusion and to aid the jury in concentrating on each specific defendant, and the charges against him, rather than incriminating

> one potentially innocent defendant solely on the basis of his association with the others."

The circuit court further opined "that the [special] verdict form did not compel the jury to convict the appellants by constructing a chain of findings leading to inevitable conviction" (22a).

The record, however, contains decisive evidence indicating that at least one of petitioner's co-defendants suffered from precisely the prejudice which petitioner claims and which the Third Circuit could not find. The special verdict form led the jury to convict business agent Chestnut on the basis of his participation in a few of the loans. The court of appeals overturned the verdicts against Chestnut, because it could find no record proof establishing that Chestnut knew his loans were granted in exchange for deposits. The special verdict form, by highlighting the loans and therefore obscuring other questions such as know-

ledge and intent, had evidently catechized the jury to find Chestnut guilty by association.

The situation as to petitioner was even more compelling than as to Chestnut. Chestnut had had a stake in the venture; he had obtained some of the loans. Petitioner's whole defense was that he had never been bribed; his deposit decisions had been made on the basis of the available interest rate. But the special verdict form asked nothing about the reason for making particular deposit decisions; it only asked about the loans, none of which went to petitioner.

A substantial risk therefore inhered in the special verdict form. It highlighted a single issue -- loans -- that was wholly irrelevant to petitioner's defense, and it therefore was likely to divert the jury from the crucial task of ascertaining why petitioner made particular deposits.

Had petitioner known of Palmeri's representations that deposits were conditioned upon the granting of personal loans? Had petitioner been influenced in his selection of banks by the availability of loans to Palmeri and Palmeri's nominees? Or had petitioner's associates taken advantage of petitioner's regular financial reports to generate loans for themselves, just as a bank robber may take advantage of routine employee arrivals to gain illicit entry? These questions, upon which petitioner's guilt or innocence must turn, were beyond the scope of the special verdict form.

D. THE WAIVER HOLDING

The court of appeals offered an alternative holding that the special verdict issue had been waived (19-20a). There were three components to the waiver holding. First, the court found an acquiescence in the taking of special verdicts when petitioner's counsel argued against sending the

loan schedule into the jury room (19a & n.7). Second, the court reasoned that "[i]t is not unfair . . . to require a criminal defendant to object, at least generally," to the use of special interrogatories (20a at n.8). Finally, the court apparently found conclusive proof that a waiver was intended because "[t]he objection to the special interrogatories was not raised in post-trial motions for a new trial." The factual basis for this waiver holding simply does not exist.

Counsel's argument about the loan schedule had been made before he learned what form the special interrogatories would take. As noted above, the interrogatories that were used could not be answered without repeatedly referring to the loan schedule which counsel had tried to keep from the jury. Hence, rather than obviating the danger inherent in the jury's access to the

loan schedule, the special verdict form exacerbated that danger.

Upon completing the charge to the jury, the district judge gave all parties an opportunity to register objections before the jury retired to deliberate. Counsel for defendant Palmeri, whose objections the court had just declared would be "reserved to each defendant," stated (Tr. v. XIII, p. 78):

> "Your Honor, I also objection [sic] to the verdict form in so far as Count 2 is concerned. I realize the purpose that Your Honor had in mind in preparing that form, nonetheless it is my position that it would tend to highlight these allegations and potentially mislead the jury."

This objection, it must be noted, was pointed out in petitioner's Brief to the court below. In response, the prosecution conceded that at the very least, a general objection to the taking of special interrogatories had been timely made. It asserted in its Brief, at 47:

"Appellants did object to the use of this verdict form (13.78) but not on the grounds now advanced, and they made no request or suggestion to aid the Judge in his dilemma [i.e., precluding a retrial by ascertaining which predicate violations the jury had found]".

REASONS FOR GRANTING CERTIORARI

I. WHETHER AND WHEN SPECIAL VERDICTS MAY BE TAKEN IN CRIMINAL CASES IS AN IMPORTANT QUESTION IN THE ADMINISTRATION OF JUSTICE AS TO WHICH THERE IS A CLEAR CONFLICT AMONG THE CIRCUITS AND AS TO WHICH THE COURT BELOW RADICALLY DEPARTED FROM THE TRADITIONAL WISDOM

A. The decision of the court of appeals in this case portends a radical change in the role of juries in federal criminal cases. Special verdicts -- interrogatories of a jury -- are a well understood technique in civil cases and find authorization in Civil Procedure Rule 49(b). But they are not authorized by the Rules of Criminal Procedure except in forfeiture cases. See Rule 31(e).

The special verdict, when procured before any general verdict of guilt has been found, inevitably fetters the jury. It necessarily calls upon the jury to explicate

its reasoning and justify its verdict. It inherently intrudes into a jury's deliberations by highlighting certain issues as those which the judge deems crucial.

It might be one thing to pose questions to a jury after it has brought in a general verdict finding guilt.* In that event, the interrogatory may serve as a further protection to the defendant since it can test the validity and the scope of the general verdict. But to put special interrogatories to a jury before it has come back with a general verdict of guilty obstructs one of the major constitutional functions of the jury in a criminal case, namely, to temper the demands of the law with the conscience of a cross-section of the accused's community. That practice hobbles the undoubted

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* It is beyond dispute that special interrogatories could never be put to a jury after it has returned an acquittal. This has been the law at least since Bushell's case, Vaughn 135, 6 How. St. Tr. 999, 124 Eng. Rep. 1006 (1670).

power of a jury "to bring in a verdict in the teeth of both the law and the facts." Horning v. District of Columbia, 254 U.S. 135, 138 (1920)(per Justice Holmes). As Prof. Thayer long since had observed, A Preliminary Treatise on Evidence 218-19 (1898):

> "Logic and neatness of legal theory have always called loud, at least in recent centuries, for special verdicts . . .. But considerations of policy have called louder for leaving to the jury a freer hand. The working out of the jury system has never been shaped merely by legal or theoretical considerations. That body always represented the people, and came to stand as the guardian of their liberties; so that whether the court or the jury should decide a point could not be settled on merely legal grounds; it is a question deeply tinged with political consideration. While it would always have been desirable from a legal point of view, to acquire from the jury special verdicts and answers to special questions, that course would have given more power to the king and less to the people."

In the case at bar, the court of appeals acknowledged that "special verdicts are disfavored in criminal cases" (19a). Just one year earlier it had made a similar

statement, explaining that "there is the belief that in the long run, special verdicts are not favorable to defendants because 'by a progression of questions, each of which seems to require an answer unfavorable to the defendant, a reluctant juror may be led to vote for a conviction which in the large he would have resisted.'" United States v. Frezzo Bros., 602 F.2d 1123, 1129 (3d Cir. 1979).

And the views of the Third Circuit, so expressed, were fully consistent with its frequently cited opinion per Judge Maris in United States v. Noble, 155 F.2d 315, 317 n.4 (3d Cir. 1946).

In now casting aside its long-settled understanding of the dangers of special verdicts in criminal cases, the Third Circuit has gone to the extreme of permitting, and obviously encouraging, the use of special interrogatories even before the jury has announced its general verdict. Without so much as recognizing the enormous

difference between a special verdict taken before and one taken after the return of a general verdict, and without citing to any supporting authority, the court of appeals has countenanced a fundamental change in the role of juries in federal criminal trials. The wisdom of that radical departure from long tradition merits this Court's attention.

B. The decision below conflicts with those in sister circuits. The Third Circuit stands alone in its encouragement of special verdicts. It is in conflict with a solid line of decisions in its sister circuits and with the considered opinion of a highly respected State court of last resort.

In the First Circuit, United States v. Spock, 416 F.2d 165 (1969), plainly forbids putting interrogatories to a jury before it has returned a general finding of guilt. This leading case has been generally

approved and extensively quoted for its analysis of the improper impact of such a procedure. Spock condemns that practice so long as there is no authorizing provision in the Rules of Criminal Procedure. That holding was explained by the Court as one involving the exercise of its supervisory power. Heald v. Mullaney, 505 F.2d 1241 (1974), cert. den., 420 U.S. 955 (1975).

In United States v. Adcock, 447 F.2d 1337 (2d Cir.), cert. den., 404 U.S. 939 (1971), the Second Circuit said quite clearly that in the absence of any specific authorization under the governing rules, special interrogatories are in and of themselves impermissible. This holding is highlighted by the subsequent decision of the Second Circuit in United States v. Huber, 603 F.2d 387 (1979). There, special verdicts were approved in a forfeiture case precisely because Rule 31(e) so permits.

In United States v. Bosch, 505 F.2d 78, 82 (5th Cir. 1974), the Fifth Circuit held

flatly, "special interrogatories should not be used in criminal trials."

In United States v. Wilson, 629 F.2d 439, 443 (6th Cir. 1980), -- an opinion handed down on the very same day as the Third Circuit's opinion in the case at bar -- the Sixth Circuit unqualifiedly rejected special verdicts except in "rare" cases and "for limited purposes."

In Gray v. United States, 174 F.2d 919 (8th Cir. 1949), cert. den., 338 U.S. 848 (1950), the Eighth Circuit held that resort to special verdicts in a criminal case invalidates a conviction.

The recent decision of the Supreme Court of New Jersey in State v. Simon, 79 N.J. 191, 398 A.2d 861 (1979), held that the use of special interrogatories called for reversal of a conviction even in the absence of objection at trial. The Simon opinion contains a thorough survey of the pertinent case law. It demonstrates that the cases in

which special interrogatories have been permitted present very special situations (79 N.J. at 202). That analysis presaged the conclusion of the Sixth Circuit, which in Wilson, supra, 629 F.2d at 443, noted that "for limited purposes in federal criminal proceedings special questions have been permitted but the cases are rare and they are distinguishable."

Finally, it should be noted that the leading treatise on federal practice states, "Where a special verdict is resisted by the defense, the trial court proceeds at its peril." 8A Moore's Federal Practice § 3102(3), p. 3109 (2d ed. 1979).

The court below ruled otherwise. In sharp contrast to the foregoing authorities, the Third Circuit's decision in the instant case invited the routine use of special verdicts in criminal cases.

If this Court is to permit any use of special interrogatories in criminal cases, it should certainly provide guidance (a) as

to what special circumstances justify their use, and (b) when the jury should be presented with such interrogatories.

C. The instant interrogatories prejudiced petitioner's defense. The court below gave short shrift to petitioner's substantial claim of specific prejudice, namely, that the particular form of special interrogatory used in this case highlighted loans which petitioner neither obtained nor contested, while obscuring the dispositive issue of petitioner's knowledge and intent.

The Third Circuit specifically characterized the loans as the "most crucial" issue for the jury to determine (22a), but surely the loans were not the dispositive issue for petitioner. If a panel of experienced jurists, the judges of the Third Circuit, could hold that one essential fact was more "crucial" to determining guilt than each of the others, and could so utterly

misperceive the critical issue in petitioner's case, is it not likely that the jurors fell into precisely the same pitfall? Did not the trial court's guidance invite that jury error because the special verdict form focused exclusively on the loans and made no mention of the issue of petitioner's knowledge and intent at the time he selected depository banks?

That the jury did in fact base its verdict upon the proof of loans while disregarding the other essential elements is evidenced both by the reversal of Chestnut's conviction and by the special verdicts against petitioner on the four loans issued by the Anthony Wayne Bank. The evidence on those transactions cannot be reconciled with the jury's special findings.

Early in September, 1973, petitioner purchased on behalf of the Severance Fund a 30-month $20,000 certificate of deposit from the Anthony Wayne Bank. As of the date of that transaction, there had been no

discussion by any party regarding loans from that bank.

Five weeks later, Palmeri obtained a loan from the Anthony Wayne bank; the next week he obtained another loan. The banker who granted those loans, testifying for the prosecution, asserted that these loans were approved on their merits. That banker further testified that he thereafter solicited additional deposits from Local 945 and its trust funds, but none were forthcoming.

In October 1975, more than two years after petitioner had made the deposit at Anthony Wayne, two of the bank's officers came to Local 945's headquarters and met with Palmeri and the local's president. The bankers had called the meeting for two reasons: Palmeri was delinquent on his loans, and the bank wanted to get additional deposits. According to one of those bankers, when they reached the topic of deposits, the local's president called

petitioner into the meeting and "suggested that Mr. Cariello should attempt to give * * * Anthony Wayne some additional business if possible."

Although the court of appeals considered that conversation highly probative, its opinion disregarded the undisputed evidence that petitioner made "no commitment" at the time, and thereafter petitioner made no further deposits at Anthony Wayne. That court's survey of the evidence moved directly from the "additional business" conversation to the proofs that Chestnut and Palmeri were each subsequently granted loans from Anthony Wayne, in the latter case over the objection of a junior officer.

The evidence of record therefore establishes that petitioner's single deposit of trust funds at Anthony Wayne was wholly lawful when made. But the special verdicts declare that his deposit decision transgressed § 1954 five weeks later, and again six weeks later, and twice more some two

years later. Conduct which was innocent when performed had become criminal solely because of the independent subsequent actions which third parties took without petitioner's knowledge or consent. The special verdicts on the Anthony Wayne loans thus exemplify the vice in submitting interrogatories and demonstrate that the instant resort to them posed a substantial likelihood of prejudice to petitioner.

The case therefore merits the attention of this Court in all aspects of the use of special verdicts in criminal cases. Absent an authorizing rule, may they be used at all? If so, may they be used before a jury has returned a general verdict of guilty? And if they may be so used, what standards governing their form will assure that those questions which are critical to a particular defendant's guilt or innocence are properly placed before the jury?

II. THE COURT OF APPEALS' WAIVER HOLDING PRESENTS A MARKED DEPARTURE FROM THIS COURT'S TEACHINGS AND RAISES IMPORTANT QUESTIONS REGARDING THE CONSTRUCTION OF CRIMINAL PROCEDURE RULE 51

The prosecution conceded that timely objection had been made to the taking of special verdicts, but the Third Circuit nonetheless found that appellate review of that issue had been waived. That waiver finding cannot withstand scrutiny. Beyond that, it puts in question practices in criminal procedure which heretofore appeared to be settled

The record contains no specific waiver; on the contrary, it contains a specific and timely objection. Counsel complained that the special verdict form "highlighted" a single facet of the accusation. Judge Aldisert's statement that not even a general objection had been pressed on the trial court therefore directly conflicts with the record. Indeed, the government acknowledged

in its Brief to the court below that a timely objection had been made to the taking of special verdicts.

The court of appeals' lapse in reviewing the record is exacerbated by its enunciation of a legal rule for which it cites to no authority. In stating the basis for its holding that the special verdict issue had been waived, the Third Circuit found significant the defendants' failure to mention the special verdict issue when moving for a new trial "in the interest of justice" pursuant to Rule 33. Its opinion states (20a):

> "The objection to the special interrogatories was not raised in post-trial motions for a new trial, most of which in this case dealt with allegations that the government had produced insufficient evidence to sustain convictions. Thus, the objection regarding the special interrogatories is not properly before us on this appeal."

That reasoning, which appears to be unknown outside of the Third Circuit, is in direct conflict with the liberal provisions of Criminal Procedure Rule 51 as construed in Lawn v. United States, 355 U.S. 339

(1958). There, this Court held that an issue is preserved for appellate review if a single timely objection was made at any point during the proceedings.

Accordingly, one subsidiary question presented by this petition is the standard for finding a waiver of major procedural protections. Encompassed therein is the continued vitality of Lawn and its construction of Rule 51. The disposition of this waiver issue obviously has enormous implications for the conduct of trial attorneys and for the scope of appellate review in all federal criminal cases.

III. THE STANDARD FOR REVIEWING THE SUFFICIENCY OF EVIDENCE OF KNOWLEDGE AND INTENT IS AN IMPORTANT AND RECURRING QUESTION AS TO WHICH THERE IS A CLEAR CONFLICT AMONG THE CIRCUITS AND AS TO WHICH THE COURT BELOW DEPARTED FROM THIS COURT'S TEACHINGS

The question of criminal knowledge and intent has moved into the forefront in federal criminal cases because of the Department of Justice's increasing emphasis on prosecuting white collar crimes. In such cases, the conspiratorial dragnet almost invariably hauls in some who protest that they had no knowledge of the unlawful endeavor, albeit their otherwise lawful activities may have facilitated the criminal ends of other persons. That is precisely the situation petitioner brings to this Court.

The adequacy of proof of criminal knowledge and intent has been a recurring theme in this Court's decisions. See, for example, Ingram v. United States, 360 U.S. 672, 680 (1959); Morissette v. United States,

342 U.S. 246 (1952); Direct Sales Co. v. United States, 319 U.S. 703, 711 (1943); United States v. Falcone, 311 U.S. 205 (1940). The controlling standard, as enunciated in Direct Sales and reiterated in Ingram, is that circumstantial proof of guilty knowledge and intent must be "clear, not equivocal." That standard protects the innocent from findings of guilt by association.

The court below clearly disregarded this Court's teachings when it held that the essential "link" to criminality was petitioner's knowledge of the Chestnut mortgage. The record establishes that Chestnut's mortgage was a wholly innocent transaction which had absolutely no connection to the overall conspiracy that had Palmeri at its hub. It seems self-evident that basing a finding of criminality upon knowledge of a lawful transaction hardly satisfies the

requirement of "clear, not equivocal" proof of knowing complicity.

Even if the Chestnut mortgage had involved a violation of § 1954, it nonetheless was an isolated transaction which will not support an inference of participation in a larger conspiracy. Hence the decision below is in conflict with those of at least three circuits: United States v. Wrehe, 628 F.2d 1079, 1084 (8th Cir. 1980)(as to Mary Lou Wrehe); United States v. Diecidue, 603 F.2d 535, 557 (5th Cir. 1979)(RICO case; as to Davis); and United States v. Peoni, 100 F.2d 401 (2d Cir. 1938). Cf. Kotteakos v. United States, 328 U.S. 750 (1946)(similar frauds committed by persons whose only connection is through a "hub" character do not establish a single, overall conspiracy). And the decision below cannot be reconciled with the Third Circuit's previous adherence to the isolated transaction analysis e.g., in United States v. United States Gypsum Co., 550 F.2d 115,

128 (3d Cir. 1977), affirmed, 438 U.S. 422 (1978).

Additionally, the Third Circuit's evaluation of the facts in this case disregarded two distinct principles which should have guided its assessment of the evidential sufficiency: First, all of the evidence has to be considered, albeit in a light favoring the prosecution. Second, a jury verdict simply cannot be upheld when stipulated facts establish an explanation of the questioned events which is wholly consistent with a reasonable hypothesis of innocence.

When evaluating the evidence in this case, the Third Circuit remarkably omitted any mention of the most critical facts bearing on the question of petitioner's knowledge of the Palmeri-procured loans. It was stipulated that petitioner innocently imparted to his co-defendants the information which would permit them to procure

loans as the quid pro quo for deposits without petitioner's knowing participation (69a):

> "During the period January, 1973 through January 1977 the executive Board of Local 945 had meetings in which Vito Cariello in his capacity as secretary-treasurer made financial reports. During this period of time there were approximately 15 union employees present, including for a substantial number of times Joseph Campisano, Ernest Palmeri, Flen Chestnut and Frank Smith, among others."

A. The court of appeals insisted that it was reviewing the evidence in the light most favorable to the prosecution (22a) -- but it obviously was not reviewing all of the evidence. In Jackson v. Virginia, 443 U.S. 307 (1979), this Court held that "upon judicial review [for sufficiency,] all of the evidence is to be considered in the light most favorable to the prosecution," 443 U.S. at 319 (emphasis in original). In petitioner's case, the court of appeals viewed only that evidence which favored the government, while disregarding guilt-negat-

ing evidence, including facts which had been stipulated.

The stipulation was central to petitioner's claim of insufficiency; it was the foundation for a reasonable and innocent explanation both of petitioner's conduct and of the events underlying the indictment. The court of appeals apparently disregarded that stipulation because it was not evidence which favored the government. There is, however, a very substantial difference between surveying only that evidence which supports the prosecution's claims, and surveying all of the evidence in a light most favorable to those claims.

The court below manifestly overlooked that difference. In the process, it gave highly equivocal evidence an unwarranted damning quality, thereby rendering hollow the teachings of Jackson, Ingram, and Direct Sales.

B. Even before this Court had decided Jackson, some of the circuits were taking care to review all of the evidence -- including that which negated guilt -- when evaluating the sufficiency of the government's proofs, and to reverse convictions where the prosecution's evidence, viewed in a favorable light, did not exclude reasonable hypotheses of innocence.

For example, the Fifth Circuit, in United States v. Haggins, 545 F.2d 1009 (1977), explicitly incorporated in its review of the proofs a discussion of the "'Negative' Evidence" (545 F.2d at 1013). Its opinion noted that the accused, who undeniably had possessed three counterfeit bills, made no effort to escape when two of them were challenged, and made no effort to destroy the third while awaiting the arrival of police. The Fifth Circuit concluded that such guilt-negating circumstances required an acquittal, because they supported a reasonable and unrefuted hypothesis that the

accused did not have criminal knowledge or intent.

Likewise, in United States v. Allison, 616 F.2d 779 (5th 1980), the Fifth Circuit allowed that the jury was free to discredit defendant Freedman's testimony that she did not know she was passing a counterfeit bill -- testimony which was bolstered by her possession of $500 in genuine currency. But the court took note that "the government's evidence was totally consistent with Freedman's version of her innocence" (616 F.2d at 784). The Allison Court continued (id.):

> The government presented no evidence of direct fact or fact upon which a reasonable inference could be drawn which would show that Freedman knew of the existence of the bills or of their counterfeit nature. Certainly, the jury could not have reasonably found that the government's evidence was inconsistent with every reasonable hypothesis of Freedman's innocence. A contrary finding would be nothing more than guilt by association.

Precisely the same analysis can be applied to the government's case against Cariello. The government produced no evi-

dence which refuted petitioner's contention that his sole concern in selecting banks was adherence to the trustees' policies; that his deposit decisions reflected the rate of interest being offered. That contention was corroborated by Cariello's disregard of the local president's alleged suggestion that more money be deposited at the Anthony Wayne Bank and by Cariello's insistence upon receiving the expected interest rate from State Bank of Springfield, in disregard of any "deal" which Palmeri might have made with the banker.

Accordingly, there is a striking conflict between the circuits as to what proofs are sufficient to establish guilt. Had petitioner been tried within the Fifth Circuit, the Haggins and Allison decisions leave little doubt that petitioner would now be exonerated. Having been tried within the Third Circuit, petitioner instead stands convicted.

The cited conflict is also manifest in the Eighth Circuit's recent decision in United States v. Wrehe, 628 F.2d 1079, 1084-85 (8th Cir. 1980). That decision is fully consistent with the Fifth Circuit's sufficiency standard and in conflict with the standard adopted below.

In reversing the mail fraud and conspiracy convictions of defendant Mary Lou Wrehe, the Eighth Circuit noted the "affirmative, uncontradicted testimony that she did not actively participate [in the incriminating] meetings" (628 F.2d at 1084). So, too, there was affirmative, uncontradicted testimony that petitioner participated in none of the incriminating meetings and conversations, but the Third Circuit apparently deemed it irrelevant to the test for sufficiency.

It is evident, therefore, that the Eighth Circuit, like the Fifth Circuit, looks to all of the circumstances -- as Jackson commands -- whereas the Third

Circuit surveys only those facts which in isolation might point towards guilt, and completely discounts compelling undisputed evidence and even stipulations if they are indicative of innocence.

There can be no more fundamental question in the administration of criminal justice than the proper standard for evaluating sufficiency of the evidence. Where there exists a sharp conflict among the circuits which can be -- and in this case is -- dispositive of a criminal accusation, and where there has been a manifest departure from the Court's "clear, not equivocal" standard, this Court's consideration is clearly warranted.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1980

VITO CARIELLO,
PETITIONER

-vs-

UNITED STATES OF AMERICA

APPENDIX TO THE PETITION FOR CERTIORARI

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 79-2147, 79-2148, 79-2149, 79-2150 and 79-2424

UNITED STATES OF AMERICA

v.

PALMERI, ERNEST P., SR.,
Appellant in No. 79-2147

(D.C. Crim. No. 78-00297-01)

UNITED STATES OF AMERICA

v.

CAMPISANO, JOSEPH,
Appellant in No. 79-2148

(D.C. Crim. No. 78-00297-02)

UNITED STATES OF AMERICA

v.

CARIELLO, VITO,
Appellant in No. 79-2149

(D.C. Crim. No. 78-00297-03)

UNITED STATES OF AMERICA

v.

SMITH, FRANK,
Appellant in No. 79-2150

(D.C. Crim. No. 78-00297-05)

UNITED STATES OF AMERICA

v.

CHESTNUT, FLEN,
Appellant in No. 79-2424

(D.C. Crim. No. 78-00297-04)

APPENDIX A

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued August 5, 1980

Before: ALDISERT and SLOVITER, *Circuit Judges*,
and HANNUM, *District Judge**

(Filed September 3, 1980)

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*Honorable John B. Hannum, of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

APPENDIX A

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OPINION OF THE COURT

ALDISERT, *Circuit Judge*.

These consolidated appeals from a jury verdict of conviction present a number of questions for consideration. The first issue concerns the proper scope of 18 U.S.C. §1954, which proscribes the receipt of kickbacks and other illegitimate benefits by persons associated with employee benefit plans. The second issue is whether the district court failed to distinguish transactions involving money covered by §1954 from transactions involving money not covered by that section. Third, we must determine whether the court erred in submitting special interrogatories to the jury. Finally, we must decide whether the government produced insufficient evidence to support each conviction under 18 U.S.C. §§1962(c) and (d), which proscribe transactions and conspiracies related to racketeering enterprises. We hold that the government produced insufficient evidence to support the conviction of appellant Flen Chestnut, and we will therefore reverse his conviction. We resolve all other issues against appellants, however, and the other convictions will therefore be affirmed.

Local 945 of the International Brotherhood of Teamsters, with offices at West Paterson, New Jersey, was an employee organization within the meaning of 18 U.S.C. §1954, and maintained three collective bargaining funds: a Pension Fund; a Welfare Fund, which pro-

vided hospitalization and related benefits to the members; and a Severance Fund, which made payments to retired or laid-off workers from individual accounts. The local also maintained a treasury consisting of unearmarked union monies. Both the Welfare Fund and the Severance Fund were "employee welfare benefit plans" within the meaning of §1954 and were covered by the Welfare Pension Plan Disclosure Act, 29 U.S.C. §§301-09, *repealed by* Employee Retirement Income Security Act, Pub. L. No. 93-406, §111, 88 Stat. 851, *codified at* 29 U.S.C. §1031, and the Employee Retirement Income Security Act, 29 U.S.C. §§1001-1381. Each fund was managed by a board of trustees comprised of three management trustees and three union trustees. Joseph Campisano was the president and Vito Cariello the secretary-treasurer of Local 945, and both were union trustees of each fund. Ernest P. Palmeri, Sr., Flen Chestnut, and Frank Smith were business representatives and employees of Local 945.

The government introduced evidence tending to show that in July, 1973, the board of trustees adopted a program of concentrating the assets of the funds into fewer and larger certificates of deposit, thereby maximizing their investment performance. The board vested authority to implement the program in Cariello. During the ensuing three years, nine area banks received more than $1,200,000 from the union in savings deposits and investments in certificates of deposit, while at the same time extending nearly three quarters of a million dollars in loans to participants in the scheme or their nominees. The banks made little or no effort to collect the loans that they had extended for fear of jeopardizing future deposits or renewals of current deposits by the local.

Under the scheme, Palmeri would contact officers of banks and indicate to them that Local 945 was interested in obtaining certificates of deposits in large face amounts from certain banks. During these conversations and with varying degrees of bluntness, Palmeri

would suggest that he or persons close to him were in need of loans. The bank officers, operating on the basis of the implied *quid pro quo*, would grant the loan with little or no meaningful evaluation of the loan application. Soon thereafter, Cariello would contact the officer to inquire about interest rates, and a deposit check on one of the union's funds would promptly arrive bearing Cariello's signature. As the scheme progressed, recipients of the loans began to default, and several of the banks victimized by the scheme experienced severe financial difficulties. In addition, the facade of extending and receiving credit began to give way to the reality of percentage kickbacks.

I.

Many transactions were alleged in the twenty-three count indictment and supported by the government at trial. Although we will not detail each transaction, we will summarize them.

In November, 1973, Alexander Smith, President of the State Bank of Chatham, was introduced to Palmeri. They discussed Palmeri's desire for a loan and Smith's interest in obtaining deposits from Local 945. Palmeri offered to speak to Cariello and said that union funds would probably be deposited in the bank. He also indicated that from time to time he would be sending friends into the bank for loans. Palmeri, who was not a customer of the bank, requested and received a $10,000 unsecured loan on the spot. A week later Smith received a telephone call from Cariello who had talked with Palmeri and was ready to deposit $20,000. Smith received the check in December and issued a certificate of deposit to Local 945.

In January, 1974, Palmeri obtained an additional $7,500 unsecured loan from the bank after he promised to speak to Cariello about increasing Local 945's deposits. A few days later, Cariello called requesting interest

rate quotations. Smith continued to press Palmeri for additional deposits and in March, 1974, Cariello called again to say that more money would soon be available.

On March 14, Palmeri obtained a $20,000 loan for his son's business, Elton Fashions. On the next day, the bank received an additional $80,000 check from Local 945. The same month, Smith agreed to lend Palmeri $20,000 for the construction of a restaurant, but only if he came up with four qualified borrowers, each of whom would receive $5,000. The loans were consummated using Campisano, two restaurant employees, and Palmeri's son as the four borrowers. Campisano's application stated that "education" was the purpose of his loan. Campisano and Palmeri later paid off the loan in cash because of Palmeri's uneasiness about Campisano having a loan outstanding from the same bank at which the union kept its funds. Campisano later denied to the FBI and to the grand jury ever having taken out a personal loan at the State Bank of Chatham or having been asked by anyone to do so.

In April, 1974, Palmeri and two officials from other unions threatened to withdraw their union deposits from the State Bank of Chatham unless Smith adopted a one hundred percent loans-for-deposits ratio. At that point Cariello and Campisano entered the room and Cariello announced that the union could keep its money in any bank with a competitive interest rate. On the promise of still more union deposits, and with the approval of the bank's board of directors, Smith ultimately agreed to a sixty percent ratio.

Several more loan for deposit transactions followed. The bank extended another loan to Elton Fashions for $15,000, and another to a sister corporation for $15,000. At Palmeri's request, appellant Chestnut received unsecured loans for $7,000 and $4,500, Emily Bonniello received one for $20,000, and appellant Frank Smith a car loan for $3,100. Palmeri also obtained a $5,000 unsecured loan for his brother. Throughout this time, Local

945's original $100,000 CD was continuously renewed, and an additional $100,000 CD was purchased with a check drawn on the Welfare Fund.

In August, 1974, Palmeri and the same two officials from other unions met with Alexander Smith to demand a two percent kickback on their deposits. Smith acquiesced in this demand. At the next meeting, which Campisano also attended, Frank Rando, one of the other officials, threatened to cooperate with the FBI's investigation of the kickback scheme. Palmeri responded: "[I]f you like breathing you won't even think such things, let alone say them." Campisano echoed the warning: "Frank, he's not kidding. Al [Smith] doesn't know anything. You know too much." Rec. at 2.171.

Alexander Smith testified that these loans were granted because of the loans for deposits arrangement with the union. Shortly after Smith left the State Bank of Chatham in May, 1975, Local 945 and its Welfare Fund redeemed their $100,000 CDs, and withdrew their deposits from the bank.

In the spring of 1974, Rando introduced Palmeri to Robert Prodan, vice-president and chief operating officer of the Bank of Bloomfield. Rando described his own loans-for-deposits relationship with the bank and Palmeri said that he would attempt to duplicate it. Palmeri went to the bank, stated his intention to obtain deposits from the local, and applied for a $15,000 unsecured loan. Prodan granted this loan on May 31, 1974. On June 21, 1974 the bank received a $100,000 check from the Welfare Fund for the purchase of a six month CD. Although Cariello signed this check, as he did all the Welfare Fund and Severance Fund checks, he never spoke to Prodan about the deposit or its terms. A few weeks later Prodan wrote to Palmeri acknowledging receipt of the money and thanking him. Palmeri called Prodan and insisted that he destroy the letter to prevent anyone from linking him to the union deposits. In July, Palmeri received a second unsecured loan for $10,000

from the Bank of Bloomfield. Four days later, the bank received a $100,000 check from Local 945.

The relationship with the Bank of Bloomfield continued with a $20,000 unsecured loan to Chestnut, a $25,000 loan to Philip Amster for the purchase of a restaurant, two $25,000 loans to the restaurant, the first of which Palmeri and George Franconero used to buy out Amster, a $20,000 loan to Emily Boniello and Palmeri's Hotel and Tavern, an installment loan of $5,000 to Palmeri's brother, three unsecured loans totalling $25,000 to Palmeri, a loan for $125,000 to the restaurant in behalf of Palmeri, Campisano, and Franconero, and two unsecured loans totalling $12,500 to appellant Frank Smith. Palmeri also used his influence and the incentive of union deposits to obtain loans for several other persons. Throughout this time, the two certificates of deposit, one drawn on the Welfare Fund and one from the local's general funds, were continuously renewed, and an additional $100,000 deposit from the Welfare Fund was made in June of 1975.

In August, 1975, Frank Smith met with Prodan's assistant in charge of delinquent loans at the Bloomfield Bank. The bank had requested that three past due loans, one each to Palmeri, Smith, and Chestnut, be renewed and that the interest and some amount of principal be paid. Smith brought in three signed renewal notes and paid the interest up to date on the three loans. When asked if he was prepared to pay some of the principal on the three loans, one of which was his own, Smith replied that he "didn't know anything about it, that Mr. Palmeri took care of it." Smith later denied to the FBI that he knew anyone other than himself who had loans at the Bank of Bloomfield.[1]

---

1. In November, 1975 Prodan was asked to resign by the Board of Directors of the bank. In January, 1976, the Federal Deposit Insurance Corporation closed the bank. The loans from the Bank of Bloomfield set forth in the indictment totalled $399,500. As of April, 1979, the outstanding balance on those loans was $388,314.18, plus interest.

APPENDIX A

In 1973 Palmeri was introduced to Paul Sheridan of the National Newark and Essex Bank as a man who could direct deposits to the bank. Palmeri promised to help direct union deposits to the bank and also requested and received a $10,000 unsecured loan. Palmeri later received an unsecured loan for $5,000 from the bank. In October, 1973, at Palmeri's request, Sheridan granted a $5,000 loan to Anthony LoParto. On the same day, Cariello drew a $100,000 check on the Welfare Fund for a certificate of deposit at the National Newark and Essex Bank. Palmeri later promised another officer of National Newark and Essex that he would obtain an additional $100,000 CD for the bank. On July 15, 1974, the $100,000 Local 945 Welfare Fund CD was renewed again, and on August 7, 1974, Palmeri received another $10,000 loan. The CD was renewed repeatedly thereafter until mid-1977.

During the summer of 1973 Carl Berger, President of the Anthony Wayne Bank, met with a group including Campisano and Palmeri at Local 945, to solicit deposits and indicate his willingness to offer loans to union employees. On September 18, 1973, the bank issued a $20,000 CD to the Local 945 Severance Fund in exchange for its check dated September 11. On October 17, 1973, Berger granted a $5,000 unsecured loan to Palmeri. The loan application that Palmeri had completed and signed showed no outstanding loans even though Palmeri had $15,000 in loans outstanding from the National Newark and Essex Bank. Later that month, Palmeri received a $3,600 auto loan. When Palmeri went to the bank in August 1974 to make a payment on his loans, he told the bank officer that he could assist in directing union funds to the bank.

Berger later met twice with various characters in this drama to seek additional deposits from the local. At both meetings, he received assurances that the local would try to work it out. At the second meeting, Campisano called Cariello in and suggested that he give

the Anthony Wayne Bank some additional business. In November, 1975, in response to a request by Palmeri, the bank granted Chestnut a $2,705 car loan. Over the opposition of a junior officer, the bank later granted an $8,000 loan to Palmeri, who had refused to submit a financial statement.

In July, 1974, Cariello called the President of the Totowa Savings and Loan Association and asked for a loan in behalf of an unidentified employee. Cariello picked up a blank mortgage application from the bank and a few days later Chestnut, who was seeking the loan, returned it. The bank approved a $46,900 mortgage to Chestnut, whose annual salary was only $19,500. One week after Chestnut's mortgage was approved, the bank received a $20,000 check for deposit drawn on Local 945 and signed by Cariello and Campisano. Two weeks later, it received a $75,000 check drawn on the Local 945 Severance Fund and co-signed by Cariello.

Palmeri was introduced to Joseph Macula, vice president of the First National Bank of Piscataway, for the purpose of obtaining a loan. At the time of the introduction Local 945 and the Local 945 Welfare Fund each had a deposit at the bank. In January 1975, the Local 945 Welfare Fund purchased a $40,000 CD. In February, a second $40,000 CD was purchased with a Local 945 check signed by Cariello and Campisano. Each of the CDs was renewed by Cariello prior to June 25, 1975, when Palmeri was granted a $15,000 loan. In connection with the loan Palmeri submitted a financial statement showing no outstanding loans.

In January, 1975, the Local 945 Welfare Fund purchased an $80,000 CD at the American National Bank and Trust Company of New Jersey. Later that month Palmeri went to the bank seeking a $10,000 unsecured loan on the promise that he would obtain additional union funds for deposit. The loan was granted that same day. The financial statement submitted by Palmeri in

connection with the loan did not accurately reflect the amount of his outstanding loans at the Bank of Bloomfield, the Anthony Wayne State Bank, or the National Newark and Essex Bank. In the ensuing months the Local 945 Severance Fund purchased a $40,000 CD and the Welfare Fund added $20,000 to its deposit and acquired a $100,000 CD which was serially renewed.

In April, 1976, the Welfare Fund purchased a $100,000 CD at the Mountain Ridge State Bank, followed a month later by the Severance Fund's purchase of a $40,000 CD from the bank. In May, Palmeri's son obtained a $60,000 loan on the understanding that Palmeri would direct another $100,000 deposit to the bank. A corporation with which Palmeri's son-in-law was associated obtained a $20,000 loan at the same time. In July and December, 1976, the Local 945 Severance Fund purchased two additional CDs at the bank in the amounts of $20,000 and $40,000, thus completing the promised deposit of an additional $100,000.

In June, 1975, John Takacs asked Prodan to help the Springfield State Bank obtain a substantial deposit with which it could purchase discounted leases from Takacs' equipment leasing business. Prodan met with Palmeri and requested a deposit at Springfield State Bank. A few days later Prodan received a telephone call from Vincent Capone who told him the deposit could be arranged but only in exchange for a $1,000 kickback. Takacs sent an envelope containing $1,000 cash to Prodan, who delivered it to Capone. Cariello then issued a $100,000 check on the Local 945 Welfare Fund. Prodan delivered the check to Takacs, and he deposited it at the Springfield State Bank. The bank then issued a CD to the Welfare Fund. Cariello later complained to Prodan that the interest rate on this CD was too low. After Cariello raised the subject again, Prodan asked Palmeri to "get this guy off my back." Palmeri reassured Prodan saying, "You got a deal. Don't worry about it."

APPENDIX A

Appellants were tried before a jury pursuant to a twenty-three count indictment filed October 5, 1978. They were variously charged with soliciting and receiving loans and kickbacks in connection with their association to Local 945's employee benefit plans, with violating and conspiring to violate the federal anti-racketeering statute, and with filing false loan applications.[2] They were convicted and sentenced. On appeal, they raise several arguments. First, appellants Palmeri, Smith, and Chestnut argue that the trial court erred in allowing the case against them to go to the jury because they are not within the class of persons to which the predicate offense, 18 U.S.C. §1954, applies. Second, all appellants object to the use of special verdict forms, alleging that these forms led the jury to reach a guilty verdict. Third, all appellants object to the introduction into evidence of transactions involving funds that are not subject to §1954. Finally, each appellant argues that the government's case against him was insufficient as a matter of law to support a jury finding of guilt.

II.

The predicate statute under which each of the appellants was prosecuted is 18 U.S.C. §1954,[3] which provides in relevant part:

Whoever being —

(1) an administrator, officer, trustee, custodian, counsel, agent, or employee of any em-

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2. We have considered Palmeri's argument that his conviction for filing false loan applications in violation of 18 U.S.C. §1014 is barred by the double jeopardy clause, and find it without merit.

3. Section 1954 serves not only as a substantive offense, but also serves as a predicate offense for 18 U.S.C. §§1962(c) and (d), which provide:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of

ployee welfare benefit plan or employee pension benefit plan; or

. . .

(3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan;

. . .

receives or agrees to receive or solicits any fee, kickback, commission, gift, loan, money, or thing of value because of or with intent to be influenced with respect to, any of his actions, decisions, or other duties relating to any question or matter concerning such plan . . . shall be fined not more than $10,000 or imprisoned not more than three years, or both. . . .

As used in this section, the term (a) "any employee welfare benefit plan" or "employee pension

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which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

To establish a violation of §1954, the government must prove that the defendant served in one of the positions specified in the first part of the statute, and that he solicited or received certain benefits with intent to be influenced in his dealings with the employee benefit plan. Section 1954 was the subject of counts 3-15 of the indictment. If two or more violations of §1954 are established, the defendant becomes subject to §1962(c), which requires that these two "acts of racketeering" be related to the conduct of the enterprise. *See United States v. Elliott*, 571 F.2d 880, 899 n.23 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978). Section 1962(c) was the subject of count two of the indictment. Subsection (d) of §1962 proscribes conspiracies to violate subsection (c), and was the subject of count one of the indictment.

> benefit plan" means any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974, and (b) "employee organization" and "administrator" as defined respectively in sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974.

Palmeri, Smith, and Chestnut assert that the statute is inapplicable to them because they were merely business agents of the union, and thus were not in positions exercising authority to disburse money from the funds. Thus, they did not occupy positions that the statute was intended to regulate. Indeed, they argue, the statute is explicit on this point, requiring that the prohibited actions be taken "with intent to be influenced with respect to, any of *his* actions, decisions or other duties relating to any question or matter concerning such plan. . . ." This language, in appellants' interpretation, limits the scope of §1954 to persons who by their direct and unassisted actions can exert influence over the benefit plans.

We read the statute differently. The first clause of §1954 refers to anyone who is "(3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan. . . ." Under this provision, these three appellants are within §1954 because they are employees and agents of Local 945. If we read the rest of the statute as appellants ask, however, the only union employees who would be covered are those who are both employees of the union and trustees or administrators of the qualifying funds. This construction would render clause (3) redundant of clause (1), which makes the statute applicable to "(1) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan. . . ." We should not construe a

statute to make it redundant of itself, *see Colautti v. Franklin*, 439 U.S. 379, 392 (1979); *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307-08 (1961); *United States v. DiSantillo*, 615 F.2d 128, 135 (3d Cir. 1980), and we do not do so here.

The more reasonable construction of the statute is one that includes within the regulated class all persons who exercise control, direct or indirect, authorized or unauthorized, over the fund. This accords with the broad purpose of the anti-racketeering statute, 18 U.S.C. §1962, for which §1954 serves as a predicate offense. *See* Organized Crime Control Act of 1970, Pub. L. No. 91-452, §904, 84 Stat. 941, *codified at* 18 U.S.C.A. §1961 note (mandating liberal construction); *United States v. Forsythe*, 560 F.2d 1127, 1135-136 (3d Cir. 1977). It also discourages behavior, like that at issue in this case, that undermines the purposes of the act but is undertaken by persons with no official position with respect to the fund. Thus, we hold that §1954, the predicate statute for the substantive and conspiracy convictions under §1962(c) and (d), applies to appellants Palmeri, Smith, and Chestnut.

Appellants cite several decisions as persuasive precedent, arguing that they have reached a different result. As support for their argument that the first part of §1954 is a mere "definitional preamble" that does not describe an offense, they cite *United States v. Marroso*, 250 F.Supp. 27 (E.D.Mich. 1966). From this premise, they conclude that the substantive offense under §1954, and thus the offense on which the §1962 violations must be predicated, is described in the second part of §1954. In further support of their contention that §1954 applies only to persons in a fiduciary relationship to the employee benefit plan, they cite *Russo v. United States*, 442 F.2d 498 (2d Cir. 1971), *cert. denied*, 404 U.S. 1023 (1972).

Neither of these decisions supports appellants' position. In *Marroso*, the district court restricted its holding

to the failure of the government to prove the allegations contained in the indictment and bill of particulars. For example, it stated that "[t]he Government by the indictment and bill of particulars is limited to proving that defendant received the payment while an agent of the Pension Fund. This it has failed to do." 250 F.Supp. at 31. Thus, *Marroso* is not responsive to our analysis of the statute, but instead represents a case in which the government presented an indictment drawn more narrowly than required by the statute. In *Russo*, the appellant argued that he was neither employed by nor an agent of the employee benefit plan. 442 F.2d at 502. The second circuit rejected this argument, however, holding that the government had established that he "render[ed] advice to the Fund on a regular basis, including giving the Fund advice regarding the financial status of potential borrowers. . . ." *Id.* Thus, *Russo* was a situation much like this one, in which the appellants had no formal relationship with the plans but exercised sufficient influence over them to come within the proscription of §1954.[4]

III.

The second argument for reversal, pressed most vigorously by appellant Campisano but joined also by Palmeri, Smith, and Chestnut, is that the government proved its case by reference to transactions that are not proscribed under §1954. Specifically, appellants object to the introduction of evidence regarding deposits from general union treasury funds, which the government now concedes are not "employee benefit plans" for purposes of §1954. Evidence of these transactions went be-

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4. Appellants also rely on *United States v. Porter*, 591 F.2d 1048 (5th Cir. 1979), a prosecution under 42 U.S.C. §1395nn(b)(1) for receiving kickbacks in connection with federal medical care programs. We do not find the analogy to this case sufficient to refute our previous analysis of §1954.

fore the jury, appellants contend, with insufficient trial court instruction to distinguish them from transactions that could prove a racketeering offense under §1954.

The government argues that the transactions from the treasury fund were admissible as overt acts in furtherance of the conspiracy alleged under §1962(d). We agree that evidence of the transactions was admissible to prove the conspiracy because the overt acts necessary to establish a conspiracy need not themselves be illegal. *See Braverman v. United States*, 317 U.S. 49, 53 (1942); *United States v. Adamo*, 534 F.2d 31, 39 n.6 (3d Cir.), *cert. denied*, 429 U.S. 841 (1976). The more troublesome argument, however, is that the trial judge failed to distinguish these unprohibited transactions sufficiently from the transactions prohibited by §1954.

We reject appellants' argument for two reasons. First, appellants now concede that they made no clear objection to the trial court's instructions relevant to this issue. As one appellant has candidly stated: "The distinction between treasury checks — the only ones signed by appellant Campisano — and covered welfare fund checks seemed to escape all of the trial participants." Post-argument Brief for Appellant Joseph Campisano at 3. An appellate court is understandably reluctant to reverse a trial court for reasons not presented to it. *See Teen-Ed, Inc. v. Kimball International, Inc.*, 620 F.2d 399, 401 (3d Cir. 1980). Thus, appellants are reduced to arguing that the trial court's instructions were plain error resulting in a manifest denial of justice. Although we will review the arguments on this basis, we note at the outset that our scope of review under this standard is substantially circumscribed. As the Supreme Court noted in *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977), "[i]t is the rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court." *See* Fed. R. Crim. P. 30; *United States v. Pennsylvania Refuse Removal Ass'n.*, 357 F.2d 806, 809 (3d Cir. 1966), *cert. denied*, 384 U.S. 961 (1966).

APPENDIX A

Whenever an appellate court reviews jury instructions given by the trial court, it must begin from the premise that the instructions must be reviewed as a whole to preserve their context. *Cupp v. Naughten*, 414 U.S. 141, 146-47 (1973); *Ayoub v. Spencer*, 550 F.2d 164, 167 (3d Cir.), *cert. denied*, 432 U.S. 907 (1977). Although at one point in its instructions on §1954 the trial court seemed to fall into the error about which appellants are now concerned,[5] the instruction regarding §1954 consumed fifteen pages of the trial transcript. *See* Rec. at 12.45 to 12.60. Reading the entire instruction as a whole, we note at least five instances in which the court emphatically distinguished the Welfare and Severance Funds as the two accounts to which §1954 would apply. Rec. at 12.50; *id.*; 12.52; 12.55; 12.65 to 12.66. The court carefully cautioned the jury that it could not transfer to appellants the intent of the bankers, who may have offered loans to appellants with intent to obtain deposits from the treasury fund as well as from the Welfare and Severance Funds. By mentioning the treasury funds in this context, however, the trial judge committed no error. Not only did he properly distinguish the funds, but actually aided the appellants by assuring that the jury did not become confused about whose intent would control.

Thus, the jury instructions as a whole fail to demonstrate a manifest denial of justice. The instructions left the jury with a clear impression that only money from

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5. The court stated:

> In order to convict a defendant, you must find that he directly or indirectly received or agreed to receive or solicited a kickback, loan, money or thing of value because of or with the intent to be influenced with respect to his actions, decisions, or other duties concerning the placing of deposits of the funds of Local 945 or its Welfare or Severance Funds.

Rec. at 12.51 to 12.52.

the Welfare and Severance Funds was relevant to the §1954 allegations. We therefore reject this argument.[6]

IV.

Appellants' next argument challenges the use of special interrogatories by the trial court. In essence, they argue that the interrogatories were inherently prejudicial and alternatively that the structure of these interrogatories predetermined the jury's verdict. We find no error in the use of special interrogatories in this complicated criminal case.

The first problem with appellants' argument is that this specific objection was not made before the trial court at an appropriate time. At the close of the evidence, the trial court conducted a hearing pursuant to Fed. R. Crim. P. 30 on pending motions and requests for specific jury instructions. At that time counsel for appellants moved to withhold the indictment from the jury during its deliberations in light of the trial court's announced intention to require special interrogatories.[7] After the jury

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6. Appellant Campisano also notes that Count 1, paragraph 3 of the indictment included use of "the assets of Local 945" as "part of said conspiracy. . . ." Because abuse of the treasury assets is not in itself a crime, appellant argues that the trial court should have stricken paragraph 3 from the indictment. This argument necessarily equates the phrase "part of the conspiracy" with "object of the conspiracy." Although the object of a conspiracy must be illegal, "part of the conspiracy" is better interpreted in this context as a reference to the overt acts taken in furtherance of the conspiracy. This interpetation is confirmed by the trial court's instruction on the conspiracy counts. Rec. at 12.34 to 12.35.

7. Edward N. Fitzpatrick, Esquire, counsel to appellant Cariello, specifically moved that the indictment not be sent out with the jury:

> I would urge the court that the indictment with its charts and its [schedules] essentially performs the same function that we objected to heretofore, that is that it provides a summation by virtue of a charge for the government. . . . I would not have an objection . . . if that chart could be excised. If it cannot be

was charged, the parties merely renewed their objections from the prior hearing. The objection to the special interrogatories was not raised in post-trial motions for a new trial, most of which in this case dealt with allegations that the government had produced insufficient evidence to sustain the convictions. Thus, the objection regarding the special interrogatories is not properly before us on this appeal.[8]

Even if it were before us, however, we would hold that the trial judge committed no reversible error. Although special interrogatories are disfavored in criminal trials, *see United States v. Frezzo Brothers, Inc.*, 602 F.2d 1123, 1129 (3d Cir. 1979), *cert. denied*, —— U.S. ——, 48 U.S.L.W. 3535 (Feb. 19, 1980), this court has established no *per se* rule against them. Indeed, in the second circuit decision on which appellants principally rely, the court recognized a substantial body of criminal cases in which special interrogatories have been used to protect defendants. *See United States v. Spock*, 416 F.2d 165, 182 n.41 (1st Cir. 1969).[9] In this case, five defend-

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NOTE 7 — *(Continued)*

> excised, then I would ask the court to exercise its discretion in as much as your honor has already indicated that you are going to have a jury form which will give them a score card, which is one of the essential purposes of having them take the indictment with them into the jury room.

Rec. at vol. 10, pt. 2, pp. 46-47. Other defense counsel joined the motion, *id.* at 47-48, which was ultimately denied, *id.* at 12.80.

8. Because special interrogatories are rarely used in criminal trials, we must draw on our experience with them in civil trials. In civil trials, failure to present a timely objection to the specific *wording* of the interrogatories results in waiver. *Frankel v. Burke's Excavating, Inc.*, 397 F.2d 167, 170 (3d Cir. 1968). It is not unfair, therefore, to require a criminal defendant to object, at least generally, to their *use*. Decisions examining jury instructions in criminal trials, a similar problem to interrogatories, also emphasize the need to make a timely objection. *Henderson v. Kibbe*, 431 U.S. at 154; *United States v. Pennsylvania Refuse Removal Ass'n.*, 357 F.2d at 809.

9. The court divided these cases into two classes: those in which a specific finding was necessary under the statute for sen-

ants were tried on a twenty-three count indictment alleging forty-six acts of racketeering and numerous other violations of federal law. We think special interrogatories were properly employed to decrease the likelihood of juror confusion and to aid the jury in concentrating on each specific defendant, and the charges against him, rather than incriminating one potentially innocent defendant solely on the basis of his association with the others. In addition, the disfavor with which courts view special interrogatories in criminal cases results from interrogatories that lead the jury in a step-by-step progression to a verdict of guilty. *See, e.g., Frezzo Brothers*, 602 F.2d at 1129; *Spock*, 416 F.2d at 182. This concern does not arise in this case.

The primary objection raised by appellants is to the special interrogatory relevant to the racketeering allegations in count two of the indictment. The interrogatory was in the form of a chart listing each defendant across the top and numbered through forty-six on the left side for each allegation of racketeering. A blank space was provided for each defendant to whom the racketeering acts related. Across the top of the form was printed:

> In reaching a verdict on count 2, you must first decide whether or not each defendant committed two or more acts of racketeering. Forty-six acts of racketeering are alleged in the indictment. A space is provided alongside the number corresponding to each act of racketeering alleged in count 2 for you to record your verdict as to each defendant charged with committing that act. If your verdict is guilty, write "G" in the appropriate space; if not guilty, write "NG."

App. at 72a. That the jury understood the form and was aided by it is demonstrated by their acquittal of Palmeri

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tencing, and those involving allegations of treason, in which the United States Constitution, art. III, §3, specifically requires an overt act.

and Cariello on acts twenty-seven and thirty-nine, and Smith on act thirty-two.

We conclude that the verdict form did not compel the jury to convict the appellants by constructing a chain of findings leading to inevitable conviction. In fact, the jury had to make a full determination of involvement in the acts of racketeering with respect to each defendant. They were fully instructed on the law relevant to this determination. We fail to see how the chart prejudiced the defendants, especially since the second chart required the jury to reach and enter a verdict with respect to each count in the indictment. The jury obviously could look at the chart and note whether or not they had found any defendant guilty of two counts of racketeering, and then enter the appropriate verdict in the blank provided beside count two. But in a case as complex as this one, we would anticipate the jury to note its prior determinations, even absent special interrogatories, and refer to these notations when reaching a verdict on the racketeering counts. Even if the jury did not use notes, we see no difference between using notes or interrogatories and merely making the determinations on the acts of racketeering and then applying the standards for conviction under §1962(c), the most crucial of which is that the defendant have committed two or more acts of racketeering. We hold, therefore, that, in the circumstances of this case, the trial court did not err in giving the jury special interrogatories to aid it in its deliberations.

V.

The final argument presented by each appellant is that the government presented insufficient evidence to support the jury verdicts of conviction. Our standard of review in examining a claim for insufficient evidence to support a jury verdict is whether "there is substantial evidence, viewed in the light most favorable to the Gov-

ernment, to uphold the jury's decision." *Burks v. United States*, 437 U.S. 1, 17 (1978); *see also United States v. Pearlstein*, 576 F.2d 531, 534 (3d Cir. 1978). Although the government must establish at least two acts of racketeering to prove a "pattern of racketeering activity" in violation of the statute, *see* 18 U.S.C. §1962(c); *United States v. Frumento*, 409 F.Supp. 136, 139 (E.D.Pa. 1976), *aff'd*, 563 F.2d 1083 (3d Cir. 1977), *cert. denied sub nom. Millhouse v. United States*, 434 U.S. 1072 (1978), it may link a particular defendant to that *pattern* by producing evidence that shows his knowledge and participation in the scheme. In this case the government did establish an ongoing pattern of racketeering activity. To obtain convictions, it also had to prove that each defendant was voluntarily connected to that pattern and performed at least two acts in furtherance of it. *See United States v. Elliott*, 571 F.2d 880, 898-99 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978). The transactions proved in this case are not illegal by their objective appearance, but become illegal because of the actors' intent. Thus, the evidence necessary to connect the appellants to this scheme is largely composed of circumstantial evidence of their motivations. We conclude that the government presented evidence sufficient to demonstrate repeated participation by every appellant but Chestnut in the pattern of illegal activity.

A.

Although appellant Palmeri places one of his arguments under the rubric of insufficient evidence to sustain his conviction, his argument is actually that §1954, the predicate statute, does not apply to him. For the reasons noted above, we have concluded that §1954 does proscribe abuse of employee benefit plan assets by persons who do not hold a formal position with respect to those plans but who nonetheless exercise real influence over the distribution or investment of their assets. Palmeri does not seriously contend that the evidence

connecting him to at least two acts of racketeering and to the conspiracy to engage in the scheme was insufficient to support the jury's verdict. The government's case against him, which might best be characterized as overwhelming, painted him as the hub around whom the entire scheme turned. We will therefore affirm the jury's verdict and the court's sentence against Palmeri.

B.

The primary argument raised by Campisano is that the evidence of his participation in transactions proscribed by §1954 was insufficient to support his conviction. His principal contention is that he was authorized to sign only checks from general funds, not from the employee benefit plans to which §1954 applies, and that the admission of checks bearing his signature and drawn on the treasury of Local 945 operated substantially to his prejudice. We have previously rejected the argument that the trial court erred in admitting evidence of the treasury fund transactions. We must now determine if the evidence relating Campisano to the conspiracy and to two discrete acts of racketeering was sufficient to allow a reasonable jury to convict him.

The government's case against Campisano included evidence from which a reasonable jury could conclude that Campisano acted with Palmeri in extracting loans from the State Bank of Chatham. Although Campisano could not sign checks issued from the Welfare or Severance Funds, the appearance of his signature on a check drawn on Local 945's general fund, Rec. at 1.194 to 1.195, and his receipt of a loan from the Bank, *id.* at 2.41 to 2.43, indicate his awareness of the scheme to extract loans for deposits. Because the Welfare Fund made a $100,000 deposit at the bank in August of 1974, the entire pattern of loans for deposits came within §1954. *Id.* at 2.133. Campisano was also present when Palmeri threatened to kill Rando if he disclosed the scheme to

the FBI, and even assured Rando of the credibility of Palmeri's threat. *Id.* at 2.171.

Similarly, after the Bank of Bloomfield had received a $100,000 check from the Welfare Fund, Campisano joined Palmeri in asking Prodan to grant a loan to Chestnut. Rec. at 4.96 to 4.102. Campisano also had an interest in the restaurant that benefitted from several loans from the Bank of Bloomfield. 4.186 to 4.189. He was present at a meeting with Palmeri and the President of the Anthony Wayne Bank, during which he instructed Cariello to give the bank some additional business. *Id.* at 7.219. Each of these incidents was supported by sufficient evidence from which the jury could conclude that Campisano was a willing participant in the conspiracy and committed these acts in violation of §1954. We conclude, therefore, that Campisano's conviction and sentence will be affirmed.

C.

Appellant Frank Smith presents a somewhat closer case than Campisano or Palmeri. The prosecution's evidence tended to show that Smith received a $3,100 automobile loan from the State Bank of Chatham, *id.* at 3.114, a $2,500 unsecured loan from the Bank of Bloomfield, *id.* at 4.168 to 4.170, and a $10,000 unsecured loan from the Bank of Bloomfield, *id.* at 4.180 to 4.182, each of which occurred during times of deposit activity from the Welfare and Severance Funds. Although this evidence alone would be insufficient to sustain Smith's conviction, he deposited the proceeds of the $10,000 loan into Palmeri's account the day he received the loan. *Id.* at 4.180 to 4.182, 7.40 to 7.41. In addition, when he entered the Bank of Bloomfield to make payments on three outstanding loans, one of which was in his name, he stated that he "didn't know anything about it, [and] that Mr. Palmeri took care of it." *Id.* at 7.41 to 7.42, 7.67 to 7.68. From these incidents, the jury could conclude

that Smith was knowingly participating in the conspiracy. By accepting three loans pursuant to the scheme, he committed the requisite acts of racketeering for purposes of §1962(c). His conviction will therefore be affirmed.

D.

Unlike Campisano and the other defendants, Cariello received no personal loans under the scheme. Nevertheless, the evidence presented by the government concerning Cariello's contacts with Totowa Savings and Loan Association regarding a mortgage loan to Chestnut was sufficient for a reasonable jury to infer Cariello's knowledge of and participation in the scheme. Cariello telephoned the bank, asked for a loan application for an employee of the union for whom he wanted to obtain a mortgage, picked up the application, and Chestnut returned it a week later. *Id.* at 8.204 to 8.206, 8.214 to 8.215. The bank subsequently approved a $46,900 mortgage for appellant Chestnut, whose annual salary was only $19,500. *Id.* at 8.214 to 8.215. Eight days after Totowa approved the Chestnut mortgage, it received a check for deposit drawn on Local 945 and signed by Cariello and appellant Campisano. *Id.* at 8.218 to 8.220. Two months later, it received another deposit check for $75,000, signed by Cariello and drawn on the Local 945 Severance Fund. *Id.* Having established his knowledge of the scheme, the government's proof that Cariello's signature appeared on each of the deposit checks, if believed, could support an inference of his intimate involvement.

Cariello attempts to negate this inference by arguing that he was charged by the board of trustees with the placement of the Funds' assets, and that he was influenced only by prevailing interest rates in determining where to purchase certificates of deposit. In light of the evidence of a link between Cariello and the scheme, we

need only note that the jury listened to this argument and rejected it. Further refutation of Cariello's assertion that he relied solely on interest rates in placing the funds comes from testimony recounting statements by Cariello to Robert Prodan, vice-president of the Bank of Bloomfield, who was implicated as the intermediary for several of the illegal transactions. Cariello indicated his concern that certain deposits at the Springfield State Bank were drawing inadequate interest. *Id.* at 5.55. Prodan in turn asked Palmeri to "get this guy [Cariello] off my back," and Palmeri assured him "You got a deal. Don't worry about it." *Id.* at 5.56. A jury could reasonably infer, taking this evidence together with the evidence previously mentioned, that Cariello was not actually placing the money with the institution offering the highest interest rate, but instead was participating in the kickback scheme. His concern about the low rates could merely indicate a concern that money for which he was most directly responsible was being too obviously misused, thus subjecting him, more than other participants in the scheme, to criminal investigation. All this evidence, taken together and in the light most favorable to the government, supports Cariello's conviction under §§1962(c) and 1954. This evidence is also sufficient to support an inference of Cariello's participation in a kickback conspiracy in violation of §1962(d).

E.

Appellant Chestnut seems to have been a major beneficiary of the loans for deposits scheme. The government introduced evidence at trial tending to prove that Chestnut received over $80,000 in loans, a large part of which were unsecured, from four different banks. During the relevant time, Chestnut was a business agent for the union with an annual salary of $19,500. *Id.* at 8.214 to 8.215. The prosecution's evidence indicated that Chestnut knew he would be unable

to repay the loans when he obtained them, *id.* 4.11 to 4.15, that he had obtained them not on the basis of his financial ability but because of his position with the union, *id.* at 4.23 to 4.24, and that he failed to disclose prior loans when he applied for additional loans, *id.* at 4.103 to 4.104, 7.200 to 7.201. Chestnut obtained one unsecured loan from the State Bank of Chatham immediately after appellant Palmeri, introduced him to Alexander Smith, president of the bank. *Id.* at 2.88 to 2.92. But at this point the government's case against Chestnut stops. It submitted no evidence tending to prove Chestnut's knowledge or participation in the scheme. That he benefitted from the loans for deposits plan is clear; what is unclear is his knowing participation in it. He cannot be held liable if, for instance, he received the loans merely because the principals in the scheme liked him or thought he needed money. Only if he knew the true basis for the loans, and participated in the plan, has he run afoul of §1954 and thus §1962. The government simply failed to provide that connection. Accordingly, Chestnut's conviction will be reversed on both the substantive and conspiracy counts.

VI.

Accordingly, the verdicts against Palmeri in No. 79-2147, Campisano in No. 79-2148, Cariello in No. 79-2149, and Smith in No. 79-2150, will be affirmed. The conviction of Chestnut in No. 79-2424 will be reversed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

(A.O. U. S. Courts, The Legal Intelligencer, Phila., Pa.) 55

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 79-2147, 79-2148, 79-2149, 79-2150
and 79-2424

UNITED STATES OF AMERICA

vs.

PALMERI, ERNEST P. SR.,

Appellant in No. 79-2147

(D.C. Crim. No. 78-00297-01)

UNITED STATES OF AMERICA

vs.

CAMPISANO, JOSEPH,

Appellant in No. 79-2148

(D.C. Crim. No. 78-00297-02)

UNITED STATES OF AMERICA

vs.

CARIELLO, VITO,

Appellant in No. 79-2149

(D.C. Crim. No. 78-00297-03)

UNITED STATES OF AMERICA

vs.

SMITH, FRANK,

Appellant in No. 79-2150

(D.C. Crim. No. 78-00297-05)

APPENDIX B

UNITED STATES OF AMERICA

vs.

CHESTNUT, FLEN,

Appellant in No. 79-2424

(D.C. Crim. No. 78-00297-04)

Appeal from the United States District Court
for the District of New Jersey

Present: ALDISERT and SLOVITER, Circuit Judges
and HANNUM, District Judge*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel on August 5, 1980.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgments of the said District Court filed July 23, 1979, and appealed at Nos. 79-2147, 79-2148, 79-2149 and 79-2150, be, and the same are hereby

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*Honorable John B. Hannum, of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

APPENDIX B

affirmed; the said judgment of the District Court appealed at No. 79-2424 be, and the same is hereby reversed, all of the foregoing in accordance with the opinion of this Court.

ATTEST:

s/B.J.R.

Betty J. Robinson
Deputy Clerk

September 3, 1980

Certified as a true copy and issued in lieu of a formal mandate as to Nos. 79-2147, 79-2148 and 79-2150, on November 4, 1980.

Test: SALLY MRVOS

Clerk, United States Court of Appeals
for the Third Circuit

APPENDIX C

UNITED STATES COURT OF APPEALS
For The Third Circuit

No. 79-2149

UNITED STATES OF AMERICA

vs.

CARIELLO, VITO, Appellant
(D.C. Crim. No. 78-00297-03)

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, and ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIGGINBOTHAM and SLOVITER, Circuit Judges, and HANNUM, District Judge.*

The Petition for rehearing filed by

Appellant

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service,

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*Honorable John B. Hannum, of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

APPENDIX C

and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

s/Aldisert
JUDGE

Dated: November 6, 1980

APPENDIX D

SUPREME COURT OF THE UNITED STATES

No. A-497

VITO CARIELLO,

Petitioner,

v.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner, IT IS ORDERED that the time for filing a petition of writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 4, 1981.

/s/William J. Brennan, Jr.

Associate Justice of the
Supreme Court of the
United States

Dated this 8th
day of December, 1980.

APPENDIX E

CONSTITUTION

Amend. 5

AMENDMENT V-CAPITAL CRIMES: DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX E

CONSTITUTION

Amend. 6

AMENDMENT VI-JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

APPENDIX E

STATUTES INVOLVED [18 U.S.C.A.]

§ 1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan:

Whoever being—

(1) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan; or

(2) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan; or

(3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; or

(4) a person who, or an officer, counsel, agent, or employee of an organization which provides benefit plan services to such plan

receives or agrees to receive or solicits any fee, kickback, commission, gift, loan, money, or thing of value because of or with intent to be influenced with respect to, any of his actions, decisions, or other duties relating to any question or matter concerning such plan or any person who directly or indirectly gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value prohibited by this section, shall be fined not more than $10,000 or imprisoned not more than three years, or both:

APPENDIX E

§ 1961. Definitions:

As used in this chapter [18 U.S.C. §§ 1961 *et seq.*]

(1) "Racketeering Activity" means . . .

(B) any act which is indictable under any of the following provisions of Title 18, United States Code: . . . section 1954 (relating to unlawful welfare fund payments)

* * *

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [enacted Oct. 15, 1970] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

§ 1962. Prohibited Activities:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

Rule 31. Verdict.

(a) RETURN. The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) SEVERAL DEFENDANTS. If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) CONVICTION OF LESS OFFENSE. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) POLL OF JURY. When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(e) CRIMINAL FORFEITURE. If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any.

Rule 51. Exceptions Unnecessary.

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

APPENDIX G

INDICTMENT - FILED OCTOBER 5, 1978

United States District Court

District of New Jersey

UNITED STATES OF AMERICA	:	Criminal No. 78-297
V.	:	18 U.S.C. §§ 1962 (c), 1962(d), 1954,
ERNEST P. PALMERI, SR.	:	1014, 2
JOSEPH CAMPISANO,	:	
VITO CARIELLO,	:	
FLEN CHESTNUT, and		
FRANK SMITH	:	
Defendants	:	

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

COUNT I

1. At all times material to this Indictment,

A. Local 945 of the International Brotherhood of Teamsters with offices in West Paterson, New Jersey (hereinafter referred to as Local 945) was an employee organization within the meaning of Title 18, United States Code, Section 1954;

B. Local 945 maintained two employee benefit plans known as (i) the Local 945 Wel-

fare Fund (hereinafter referred to as the "Welfare Fund"), and (ii) the Local 945 Severance Fund (hereinafter referred to as the "Severance Fund") -- both of which were employee benefit plans within the meaning of Title 18, United States Code, Section 1954;

C. Local 945 and its two employee benefit plans (hereinafter referred to collectively as the "Local 945 Enterprise") were an enterprise within the meaning of Title 18, United States Code, Section 1961(4), engaged in and the activities of which affected interstate commerce;

D. The defendants, ERNEST P. PALMERI, SR., FLEN CHESTNUT and FRANK SMITH were business representatives and employees of Local 945; and

E. The defendants, JOSEPH CAMPISANO and VITO CARIELLO were trustees of the Welfare Fund and Severance Fund and were also officers of Local 945, that is, the President and Secretary-Treasurer respectively.

2. That from at least as early as June, 1973, up to and including the date of filing of

APPENDIX G

this Indictment, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR.
JOSEPH CAMPISANO,
VITO CARIELLO,
FLEN CHESTNUT, and
FRANK SMITH

did knowingly, wilfully and unlawfully combine, conspire, confederate, and agree with each other and others who are both known and unknown to the Grand Jury to conduct and participate directly and indirectly in the conduct of the affairs of the Local 945 Enterprise through a pattern of racketeering activity involving multiple violations of Title 18, United States Code, Section 1954 in which the defendants knowingly, wilfully and unlawfully would receive, agree to receive and solicit kickbacks, loans, money and things of value from various banks in the District of New Jersey because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund and Severance Fund, to wit, the purchase of certificates of deposit at said banks with the assets

of the Welfare Fund and Severance Fund.

3. It was a part of said conspiracy that the defendants would utilize the assets of Local 945 and the Welfare Fund and Severance Fund in order to purchase and wilfully cause the purchase of certificates of deposit from the Bank of Bloomfield, State Bank of Chatham, Anthony Wayne Bank, National Newark and Essex Bank, First National Bank of Piscataway, Mountain Ridge State Bank, American National Bank and Trust of New Jersey, Totowa Savings and Loan Association and the Springfield State Bank, in exchange for which the defendants and other individuals and corporations designated by the defendants would receive kickbacks, loans, money and things of value from said banks totaling in excess of $800,000.00.

4. It was a further part of said conspiracy that when the certificates of deposit matured, the defendants and their co-conspirators would wilfully cause the renewal of the certificates of deposit in exchange for additional loans and the renewal of loans that had previously

been granted by said banks to the defendants and to the individuals and corporations designated by the defendants.

5. It was a further part of said conspiracy that the defendants would submit false loan applications and false financial statements to the said banks in order to influence said banks in the granting of said loans.

OVERT ACTS

[There follows a list of 135 Overt Acts]

COUNT 2

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. From at least as early as June, 1973 up to and including the date of filing of this Indictment, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR.
JOSEPH CAMPISANO,
VITO CARIELLO,
FLEN CHESTNUT, and
FRANK SMITH

did knowingly, wilfully and unlawfully conduct and participate directly and indirectly in the

APPENDIX G

conduct of the affairs of the Local 945 Enterprise through a pattern of racketeering activity as defined by Title 18, United States Code, Section 1961(5) involving multiple violations of Title 18, United States Code, Section 1954, in which the defendants knowingly, wilfully and unlawfully did receive, agree to receive and solicit the below specified kickbacks, loans, money and things of value from the below specified banks in the District of New Jersey because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund and Severance Fund, to wit, the purchase of certificates of deposit at said banks with the assets of the Welfare Fund and Severance Fund as follows:

APPENDIX G

BANK OF BLOOMFIELD

	APPROXIMATE DATE	AMOUNT	BORROWER'S NAME	DEFENDANTS INVOLVED
1.	05/31/74	$15,000	Ernest Palmeri	Palmeri, Cariello
2.	07/08/74	$10,000	Ernest Palmeri	Palmeri, Cariello
3.	08/23/74	$20,000	Flen & Leola Chestnut	Palmeri, Campisano, Cariello, Chestnut
4.	09/10/74	$25,000	Coterie, Inc.	Palmeri, Cariello
5.	09/13/74	$20,000	Emily Boniello, etc.	Palmeri, Cariello
6.	09/26/74	$25,000	Coterie, Inc.	Palmeri, Cariello
7.	10/08/74	$ 5,000	Frank Palmeri	Palmeri, Cariello
8.	10/15/74	$10,000	Ernest Palmeri	Palmeri, Cariello
9.	11/15/74	$10,000	Ernest Palmeri	Palmeri, Cariello
10.	12/04/74	$ 5,000	Ernest Palmeri	Palmeri, Cariello
11.	12/17/74	$ 2,500	Frank Smith	Palmeri, Cariello, Smith
12.	02/19/75	$10,000	Frank Smith	Palmeri, Cariello, Smith
13.	03/07/75	$ 7,000	James DeLuccia	Palmeri, Cariello
14.	03/18/75	$125,000	Coterie, Inc.	Palmeri, Campisano, Cariello
15.	03/19/75	$10,000	Joseph Pettineo	Palmeri, Cariello
16.	04/12/75	$10,000	Frank Palmeri	Palmeri, Cariello
17.	05/08/75	$30,000	Coterie, Inc.	Palmeri, Cariello
18	09/10/75	$25,000	Comillo Molinaro	Palmeri, Cariello
19.	10/09/75	$35,000	Sweep-Easy, M.C.	Palmeri, Cariello

STATE BANK OF CHATHAM

20.	11/27/73	$10,000	Ernest Palmeri	Palmeri, Cariello
21.	01/11/74	$ 7,500	Ernest Palmeri	Palmeri, Cariello
22.	03/14/74	$20,000	Elton Fashions	Palmeri, Cariello
23.	04/02/74	$ 5,000	Joseph Campisano	Palmeri, Campisano, Cariello
24.	04/02/74	$ 5,000	Alfred Foschi	Palmeri, Cariello

STATE BANK OF CHATHAM

APPROXIMATE DATE	AMOUNT	BORROWER'S NAME	DEFENDANTS INVOLVED
25. 04/02/74	$ 5,000	Neil F. Batelli	Palmeri, Cariello
26. 04/02/74	$ 5,000	Ernest Palmeri, Jr.	Palmeri, Cariello
27. 06/04/74	$15,000	Robert Gottlieb	Palmeri, Cariello
28. 07/01/74	$ 7,000	Flen Chestnut	Palmeri, Cariello, Chestnut
29. 08/07/74	$20,000	Emily Boniello	Palmeri, Cariello
30. 08/23/74	$ 5,000	Frank Palmeri	Palmeri, Cariello
31. 11/13/74	$15,000	Elton Fashions	Palmeri, Cariello
32. 11/14/74	$ 3,100	Frank Smith	Palmeri, Cariello, Smith

ANTHONY WAYNE BANK

33. 10/17/73	$ 5,000	Ernest Palmeri	Palmeri, Cariello
34. 10/25/73	$ 3,600	Ernest Palmeri	Palmeri, Cariello
35. 11/03/75	$ 2,705	Flen Chestnut	Palmeri, Cariello, Chestnut
36. 12/04/75	$ 8,000	Ernest Palmeri	Palmeri, Cariello

NATIONAL NEWARK & ESEX

37. 08/23/73	$10,000	Ernest Palmeri	Palmeri, Cariello
38. 10/05/73	$ 5,000	Ernest Palmeri	Palmeri, Cariello
39. 10/12/73	$ 5,000	Anthony LoPardo	Palmeri, Cariello
40. 08/07/74	$10,000	Ernest Palmeri	Palmeri, Cariello

FIRST NATIONAL BANK OF PISCATAWAY

41. 06/25/75	$15,000	Ernest Palmeri	Palmeri, Cariello

MOUNTAIN RIDGE STATE BANK

42. 05/10/76	$20,000	Sweep-Easy M.C.	Palmeri, Cariello
43. 05/76	$60,000	Paul & Marilyn Palmeri	Palmeri, Cariello

AMERICAN NATIONAL BANK AND TRUST OF NEW JERSEY

APPROXIMATE DATE	AMOUNT	BORROWER'S NAME	DEFENDANTS INVOLVED
44. 01/30/75	$10,000	Ernest Palmeri	Palmeri, Cariello
		TOTOWA SAVINGS & LOAN ASSOCIATION	
45. 08/08/74	$46,900	Flen & Leola Chestnut	Cariello, Chestnut
		SPRINGFIELD STATE BANK	
46. Spring 1975	$ 1,000 (Kickback)		Palmeri, Cariello

In violation of Title 18, United States Code, Sections 1962(c) and 2.

APPENDIX G

APPENDIX G

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about May 31, 1974, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR. and
VITO CARIELLO

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $15,000.00 from the Bank of Bloomfield because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 4

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

APPENDIX G

2. On or about August 23, 1974, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR.
JOSEPH CAMPISANO
VITO CARIELLO, and
FLEN CHESTNUT

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $20,000.00 from the Bank of Bloomfield because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 5

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about December 17, 1974, in the

APPENDIX G

District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR.
VITO CARIELLO, and
FRANK SMITH

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $2,500.00 from the Bank of Bloomfield because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 6

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about February 19, 1975, in the District of New Jersey and elsewhere, the defendants,

APPENDIX G

ERNEST P. PALMERI, SR.,
VITO CARIELLO, and
FRANK SMITH

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $10,000.00 from the Bank of Bloomfield because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 7

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about March 18, 1975, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR.,
JOSEPH CAMPISANO, and
VITO CARIELLO

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $125,000.00 from the Bank of Bloomfield because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 8

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about April 12, 1975, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR. and
VITO CARIELLO

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and

thing of value of $10,000.00 from the Bank of Bloomfield because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 9

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about November 27, 1973, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR. and
VITO CARIELLO

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $10,000.00 from the State Bank of Chatham because of and with intent to be in-

fluenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 10

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about April 2, 1974, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR.,
JOSEPH CAMPISANO and
VITO CARIELLO

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $5,000.00 from the State Bank of Chatham because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Wel-

fare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT II

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about July 1, 1974, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR.,
VITO CARIELLO, and
FLEN CHESTNUT

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $7,000.00 from the State Bank of Chatham because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

APPENDIX G

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 12

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about November 14, 1974, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR.,
VITO CARIELLO, and
FRANK SMITH

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $3,100.00 from the State Bank of Chatham because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

APPENDIX G

COUNT 13

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. In and around May, 1976, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR. and
VITO CARIELLO

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $60,000.00 from Mountain Ridge Bank because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund and Severance Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund and Severance Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 14

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as

though set forth in full herein.

2. On or about January 30, 1975, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR. and
VITO CARIELLO

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a loan, money and thing of value of $10,000.00 from the American National Bank and Trust of New Jersey because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund and Severance Fund, to wit, the purchase of certificates of deposit at the said bank with assets of the Welfare Fund and Severance Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 15

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth herein.

APPENDIX G

2. In and around the Spring of 1975, in the District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR. and
VITO CARIELLO

did knowingly, wilfully and unlawfully receive, agree to receive and solicit a kickback, money and thing of value, to wit, $1,000.00 in U.S. currency because of and with intent to be influenced with respect to their actions, decisions and duties relating to questions and matters concerning the investment of the assets of the Welfare Fund, to wit, the purchase of a certificate of deposit at the Springfield State Bank with assets of the Welfare Fund.

In violation of Title 18, United States Code, Sections 1954 and 2.

COUNT 16

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about February 19, 1975, in the District of New Jersey and elsewhere, the defen-

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dants,

ERNEST P. PALMERI, SR., and
FRANK SMITH

did knowingly, wilfully and unlawfully make a materially false statement to the Bank of Bloomfield, located in Bloomfield, New Jersey, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve a loan in the amount of $10,000.00 in the name of FRANK SMITH, in that it was represented by the defendants that the loan was for the benefit of the defendant FRANK SMITH, when in truth and in fact the loan was for the benefit of the defendant ERNEST P. PALMERI, SR.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT 17

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On approximately April 2, 1974, in the

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District of New Jersey and elsewhere, the defendants,

ERNEST P. PALMERI, SR., and
JOSEPH CAMPISANO

did knowingly, wilfully and unlawfully make and cause to be made a materially false statement in a loan application submitted to the State Bank of Chatham, located in Chatham, New Jersey, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve a loan in the amount of $5,000.00 in the name of JOSEPH CAMPISANO, in that it was represented in said loan application that the purpose of the loan was for education, when in truth and in fact the purpose was not as so stated.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT 18

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

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2. On or about April 2, 1974, in the District of New Jersey and elsewhere, the defendant,

ERNEST P. PALMERI, SR.

did knowingly, wilfully and unlawfully make and cause to be made a materially false statement in a loan application submitted to the State Bank of Chatham, located in Chatham, New Jersey, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve a loan in the amount of $5,000.00 in the name of Alfred Foschi, in that it was represented in said loan application that the purpose of the loan was "SBL", when in truth and in fact the purpose of the loan was not as so stated.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT 19

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about April 2, 1974, in the Dis-

trict of New Jersey and elsewhere, the defendant,

ERNEST P. PALMERI, SR

did knowingly, wilfully and unlawfully make and cause to be made a materially false statement in a loan application submitted to the State Bank of Chatham, located in Chatham, New Jersey, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve a loan in the amount of $5,000.00 in the name of Neil F. Batelli, in that it was represented in said loan application that the purpose of the loan was for wedding expenses, when in truth and in fact the purpose of the loan was not as so stated.

In violation of Title 18, United States Code, Sections 1014 and 2.

COUNT 20

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about October 15, 1973, in the District of New Jersey and elsewhere, the defen-

dant,

ERNEST P. PALMERI, SR.

did knowingly, wilfully and unlawfully make a materially false statement in a loan application submitted to the Anthony Wayne Bank, located in Wayne, New Jersey, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve a loan in the amount of $5,000.00 in the name of ERNEST PALMERI, in that the defendant represented in said loan application that at the time of the application he did not have any outstanding loans, when in truth and in fact the defendant well knew he did have outstanding loans.

In violation of Title 18, United States Code, Section 1014.

COUNT 21

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about June 25, 1975, in the District of New Jersey and elsewhere, the defendant,

APPENDIX G

ERNEST P. PALMERI, SR.

did knowingly and wilfully make a materially false statement in a personal financial statement submitted to the First National Bank of Piscataway, located in Piscataway, New Jersey, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve a loan in the amount of $15,000.00 in the name of ERNEST PALMERI, in that the defendant represented in said personal financial statement that at the time of the statement he did not have any outstanding loans, when in truth and in fact the defendant well knew he did have outstanding loans.

In violation of Title 18, United States Code, Section 1014.

COUNT 22

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about January 28, 1975, in the District of New Jersey and elsewhere, the defen-

dant,

ERNEST P. PALMERI, SR.

did knowingly, wilfully and unlawfully make a materially false statement in a personal financial statement submitted to the American National Bank and Trust of New Jersey, located in Morristown, New Jersey, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve a loan in the amount of $10,000.00 in the name of ERNEST PALMERI, in that the defendant represented in said personal financial statement that at the time of the statement he had "Notes Payable to Banks" in excess of $65,000.00.

In violation of Title 18, United States Code, Section 1014.

COUNT 23

1. Paragraph 1 of Count 1 of this Indictment is hereby realleged and incorporated as though set forth in full herein.

2. On or about August 31, 1975, in the District of New Jersey and elsewhere, the defen-

dant,

ERNEST P. PALMERI, SR.

did knowingly, wilfully and unlawfully make a materially false statement in a personal financial statement submitted to Garfield Trust Company, located in Garfield, New Jersey, the deposits of which were then and there insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve a loan in the amount of $15,000.00 in the name of ERNEST PALMERI, in that the defendant represented in said personal financial statement that at the time of the statement he did not have any outstanding loans, when in truth and in fact the defendant well knew he did have outstanding loans.

In violation of Title 18, United States Code, Section 1014.

A TRUE BILL:

_____
FOREMAN

_____
ROBERT J. DEL TUFO
UNITED STATES ATTORNEY

APPENDIX H

STIPULATION

It is hereby agreed and stipulated by the parties in this action that at times pertinent to the indictment the following facts are true and accurate:

During the period January, 1973 through January 1977 the Executive Board of Local 945 had meetings in which Vito Cariello in his capacity as secretary-treasurer made financial reports. During this period of time there were approximately 15 union employees present, including for a substantial number of times Joseph Campisano, Ernest Palmeri, Flen Chestnut and Frank Smith, among others.

UNITED STATES OF AMERICA :

V. :

ERNEST P. PALMERI, SR. : Criminal No. 78-297
JOSEPH CAMPISANO,
VITO CARIELLO :
FLEN CHESTNUT
FRANK SMITH :

In reaching a verdict on count 2, you must first decide whether or not each defendant committed two or more acts of racketeering. Forty-six acts of racketeering are alleged in the indictment. A space is provided alongside the number corresponding to each act of racketeering alleged in count 2 for you to record your verdict as to each defendant charged with committing that act. If your verdict is guilty, write "G" in the appropriate space; if not guilty, write "NG."

ACTS OF RACKETEERING	ERNEST P. PALMERI, SR.	JOSEPH CAMPISANO	VITO CARIELLO	FLEN CHESTNUT	FRANK SMITH
1	G		G		
2	G		G		
3	G	G	G	G	
4	G		G		

APPENDIX I - SPECIAL VERDICT FORM - FILED MAY 4, 1979

ACTS OF RACKETEERING	ERNEST P. PALMERI, SR.	JOSEPH CAMPISANO	VITO CARIELLO	FLEN CHESTNUT	FRANK SMITH
5	G		G		
6	G		G		
7	G		G		
8	G		G		
9	G		G		
10	G		G		
11	G		G		G
12	G		G		G
13	G		G		
14	G	G	G		
15	G		G		
16	G		G		

ACTS OF RACKETEERING	ERNEST P. PALMERI, SR.	JOSEPH CAMPISANO	VITO CARIELLO	FLEN CHESTNUT	FRANK SMITH
17	G		G		
18	G		G		
19	G		G		
20	G		G		
21	G		G		
22	G		G		
23	G	G	G		
24	G		G		
25	G		G		
26	G		G		
27	NG		NG		
28	G		G	G	
29	G		G		

ACTS OF RACKETEERING	ERNEST P. PALMERI, SR.	JOSEPH CAMPISANO	VITO CARIELLO	FLEN CHESTNUT	FRANK SMITH
30	G		G		
31	G		G		
32	G		G		NG
33	G		G		
34	G		G		
35	G		G	G	
36	G		G		
37	G		G		
38	G		G		
39	NG		NG		
40	G		G		
41	G		G		
42	G		G		

ACTS OF RACKETEERING	ERNEST P. PALMERI, SR.	JOSEPH CAMPISANO	VITO CARIELLO	FLEN CHESTNUT	FRANK SMITH
43	G		G		
44	G		G		
45			G	G	
46	G		G		

s/K.A.K
Karen A. Kienzle, Forelady